



## **RFP No: 3643**

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INVITATION: Sealed proposals, subject to the attached conditions, will be received at this office until January 21, 2011 @ **3:00 p.m.** Central Time for the acquisition of the products/services described below for Mississippi Secretary of State's Office.

Web-based On-line Elections Training System

NOTE: THIS RFP CONTAINS MANDATORY REQUIREMENTS TO WHICH NO EXCEPTION MAY BE TAKEN. SEE SECTION VII, ITEM 2, FOR DETAILS.

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**The Vendor must submit proposals and direct inquiries to:**

Tangela Harrion  
Technology Consultant  
Information Technology Services  
Suite 508, 301 N. Lamar Street  
Jackson, MS 39201-1495  
(601) 359-2612  
Tangela.Harrion@its.ms.gov

To prevent opening by unauthorized individuals, all copies of the proposal must be sealed in the package. The following must be clearly typed on a label affixed to the package in a clearly visible location:

PROPOSAL, SUBMITTED IN RESPONSE TO  
RFP NO. 3643  
due January 21, 2011 @ 3:00 p.m.,  
ATTENTION: Tangela Harrion

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**David L. Litchliter**  
**Executive Director, ITS**

## ITS RFP Response Checklist

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RFP Response Checklist: These items should be included in your response to RFP No. 3643.

- \_\_\_\_\_ 1) One clearly marked original response and nine (9) identical copies of the complete proposal. Label the front and spine of the three-ring loose-leaf binder with the Vendor name and RFP number. Include the items listed below inside the binder. Please DO NOT include a copy of the RFP in the binder.
- \_\_\_\_\_ 2) *Submission Cover Sheet*, signed and dated. (Section I)
- \_\_\_\_\_ 3) *Proposal Bond*, if applicable (Section I)
- \_\_\_\_\_ 4) *Proposal Exception Summary*, if applicable (Section V)
- \_\_\_\_\_ 5) Vendor response to *RFP Questionnaire* (Section VI)
- \_\_\_\_\_ 6) Point-by-point response to *Technical Specifications* (Section VII)
- \_\_\_\_\_ 7) One clearly marked original response and three (3) identical copies of the *Cost Information Submission* (Section VIII) submitted as a separate sealed proposal that is clearly marked with Vendor's Name and "Cost Proposal in Response to RFP No. 3643 – Do Not Open."
- \_\_\_\_\_ 8) *References* (Section IX)
- \_\_\_\_\_ 9) *Preliminary Work Plan* (Section VII)
- \_\_\_\_\_ 10) *Copy of Individual(s) Masters Level Adult Education Degree* (Section VII)

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## SECTION I

### SUBMISSION COVER SHEET & CONFIGURATION SUMMARY

Provide the following information regarding the person responsible for the completion of your proposal. This person should also be the person the Mississippi Department of Information Technology Services, **(ITS)**, should contact for questions and/or clarifications.

Name	_____	Phone #	_____
Address	_____	Fax #	_____
		E-mail	_____

Subject to acceptance by **ITS**, the Vendor acknowledges that by submitting a proposal AND signing in the space indicated below, the Vendor is contractually obligated to comply with all items in this Request for Proposal (RFP), including the Standard Contract in Exhibit A if included herein, except those listed as exceptions on the Proposal Exception Summary Form. If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions. This acknowledgement also contractually obligates any and all subcontractors that may be proposed. Vendors who sign below may not later take exception to any point during contract negotiations. The Vendor further certifies that the company represented here is an authorized dealer in good standing of the products/services included in this proposal.

**Original signature** of Officer in Bind of Company/Date

Name (typed or printed)

# Title

Company name

Physical address

## State of Incorporation

## CONFIGURATION SUMMARY

The Vendor must provide a summary of the main components of products/services offered in this proposal using 100 words or less.

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## **PROPOSAL BONDS**

A Proposal Bond is not required for this procurement.

## **SECTION II**

### **PROPOSAL SUBMISSION REQUIREMENTS**

The objective of the Proposal Submission Requirements section is to provide Vendors with the information required to submit a response to this Request for Proposal (RFP). A Vendor who has responded to previous RFPs issued by **ITS** should not assume that the requirements are the same, as changes may have been made.

1. Failure to follow any instruction within this RFP may, at the State's sole discretion, result in the disqualification of the Vendor's proposal.
2. The State has no obligation to locate or acknowledge any information in the Vendor's proposal that is not presented under the appropriate outline according to these instructions and in the proper location.
3. The Vendor's proposal must be received, in writing, by the office of **ITS** by the date and time specified. **ITS** is not responsible for any delays in delivery or expenses for the development or delivery of proposals. Any proposal received after proposal opening time will be returned unopened. Any proposal received with insufficient postage will be returned unopened.
4. Proposals or alterations by fax, e-mail, or phone will not be accepted.
5. Original signatures are required on one copy of the Submission Cover Sheet and Configuration Summary, and the Vendor's original submission must be clearly identified as the original. The Vendor's original proposal must include the Proposal Bond, (if explicitly required in Section IV).
6. **ITS** reserves the right to reject any proposals, including those with exceptions, prior to and at any time during negotiations.
7. **ITS** reserves the right to waive any defect or irregularity in any proposal procedure.
8. The Vendor may intersperse their response following each RFP specification but must not otherwise alter or rekey any of the original text of this RFP. If the State determines that the Vendor has altered any language in the original RFP, the State may, in its sole discretion, disqualify the Vendor from further consideration. The RFP issued by **ITS** is the official version and will supersede any conflicting RFP language submitted by the Vendor.

The Vendor must conform to the following standards in the preparation of the Vendor's proposal:

- 8.1 The Vendor is required to submit one clearly marked original response and nine (9) identical copies of the complete proposal, including all sections and exhibits, in three-ring binders. The Vendor is also required to submit one

clearly marked original response and (three) 3 identical copies of the *Cost Information Submission* (Section VIII) submitted as a separate sealed proposal that is clearly marked with Vendor's Name and "Cost Proposal in Response to RFP 3643 – Do Not Open."

- 8.2 To prevent opening by unauthorized individuals, all copies of the proposal must be sealed in the package. A label containing the information on the RFP cover page must be clearly typed and affixed to the package in a clearly visible location.
  - 8.3 Number each page of the proposal.
  - 8.4 Respond to the sections and exhibits in the same order as this RFP.
  - 8.5 Label and tab the responses to each section and exhibit, using the corresponding headings from the RFP.
  - 8.6 If the Vendor does not agree with any item in any section, then the Vendor must list the item on the *Proposal Exception Summary Form*. (See Section V for additional instructions regarding Vendor exceptions.)
  - 8.7 Occasionally, an outline point in an attachment requests information which is not applicable to the products/services proposed. If the Vendor is certain the point does not apply to the given RFP, the Vendor should respond with "NOT APPLICABLE."
  - 8.8 Where an outline point asks a question or requests information, the Vendor must respond with the specific answer or information requested.
  - 8.9 When an outline point/attachment is a statement provided for the Vendor's information only, the Vendor need only read that point. The Vendor acknowledges having read and accepting, or taking exception to, all sections by signing the *Submission Cover Sheet* and providing a *Proposal Exception Summary Form*.
  - 8.10 Where a minimum requirement has been identified, respond by stating the item (e.g., device name/model number, guaranteed response time) proposed and how it will meet the specifications.
  - 8.11 The Vendor must fully respond to each requirement within the *Technical Specifications* by fully describing the manner and degree by which the proposal meets or exceeds said requirements.
9. It is the responsibility of the Vendor to clearly identify all costs associated with any item or series of items in this RFP. The Vendor must include and complete all parts of the cost proposal in a clear and accurate manner. **Omissions, errors, misrepresentations, or inadequate details in the Vendor's cost proposal may be grounds for rejection of**

**the Vendor's proposal. Costs that are not clearly identified will be borne by the Vendor.** The Vendor must complete the *Cost Information Submission* in this RFP, which outlines the minimum requirements for providing cost information. The Vendor should supply supporting details as described in the *Cost Information Submission*.

10. **ITS** reserves the right to request additional information or clarification of a Vendor's proposal. The Vendor's cooperation during the evaluation process in providing **ITS** staff with adequate responses to requests for clarification will be considered a factor in the evaluation of the Vendor's overall responsiveness. Lack of such cooperation or failure to provide the information in the manner required may, at the State's discretion, result in the disqualification of the Vendor's proposal.
11. Unsolicited clarifications and updates submitted after the deadline for proposals will be accepted or rejected at the sole discretion of **ITS**.
12. Unsolicited clarifications in the evaluation and selection of lowest and best proposal will be considered only if all the following conditions are met:
  - 12.1 A clarification to a proposal that includes a newly announced product line or service with equal or additional capability to be provided at or less than the proposed price will be considered.
  - 12.2 Information provided must be in effect nationally and have been formally and publicly announced through a news medium that the Vendor normally uses to convey customer information.
  - 12.3 Clarifications must be received early enough in the evaluation process to allow adequate time for re-evaluation.
  - 12.4 The Vendor must follow procedures outlined herein for submitting updates and clarifications.
  - 12.5 The Vendor must submit a statement outlining the circumstances for the clarification.
  - 12.6 The Vendor must submit one clearly marked original and nine (9) copies of the clarification.
  - 12.7 The Vendor must be specific about which part of the original proposal is being changed by the clarification (i.e., must include exact RFP reference to section and outline point).
13. **Communications with State**

From the issue date of this RFP until a Vendor is selected and the selection is announced, responding Vendors or their representatives may not communicate, either orally or in writing regarding this RFP with any statewide elected official, state officer or employee, member of the legislature or legislative employee except as noted herein. To ensure



equal treatment for each responding Vendor, all questions regarding this RFP must be submitted in writing to the State's contact person for the selection process, and not later than the last date for accepting responding Vendor questions provided in this RFP. All such questions will be answered officially by the State in writing. All such questions and answers will become addenda to this RFP, and they will be posted to the ITS web site. Vendors failing to comply with this requirement will be subject to disqualification.

- 13.1      The State's contact person for the selection process is: Tangela Harrion, Technology Consultant, 301 North Lamar Street, Ste. 508, Jackson, MS 39201, 601-359-2612, [Tangela.Harrion@its.ms.gov](mailto:Tangela.Harrion@its.ms.gov).
- 13.2      Vendor may consult with State representatives as designated by the State's contact person identified in 13.1 above in response to State-initiated inquiries. Vendor may consult with State representatives during scheduled oral presentations and demonstrations excluding site visits.

## **SECTION III VENDOR INFORMATION**

The objective of the Vendor Information section of this RFP is to provide Vendors with information required to respond to the RFP successfully.

**1. Interchangeable Designations**

The terms “Vendor” and “Contractor” are referenced throughout this RFP. Generally, references to the “Vendor” are used in conjunction with the proposing organization and procurement process leading up to the final RFP selection and award. The term “Contractor” denotes the role assumed, post-award, by the winning Vendor. Additionally, the terms “State of Mississippi,” “State” or “ITS” may be used interchangeably throughout this RFP to denote the political entity issuing the RFP and requesting responses from Vendors throughout these specifications. References to a specific agency, institution or other political entity represent the client or customer on whose behalf ITS is issuing the RFP.

**2. Vendor’s Responsibility to Examine RFP**

Vendors must examine all documents, forms, specifications, standard provisions, and instructions.

**3. Proposal as Property of State**

All written proposal material becomes the property of the State of Mississippi.

**4. Written Amendment to RFP**

Any interpretation of an ITS RFP will be made by written amendment only. The State will not be responsible for any other explanation of this RFP. A copy of any amendment will be posted on the ITS website, together with the associated RFP specification. Vendors are required to check the ITS website periodically for RFP amendments before the proposal opening date at: [http://www.its.ms.gov/rfps/rfps\\_awaiting.shtml](http://www.its.ms.gov/rfps/rfps_awaiting.shtml).

Any and all amendments will be posted no later than noon, seven days prior to the proposal opening date listed on the cover page of this RFP. Should you be unable to access the ITS website, you may contact the ITS technology consultant listed on page one of this RFP and request a copy.

**5. Oral Communications Not Binding**

Only transactions which are in writing from ITS may be considered official. No negotiations, decisions, or actions shall be executed by any Vendor as a result of any discussions with any State employee.

**6. Vendor’s Responsibility for Delivery**

Vendors must ensure, through reasonable and sufficient follow-up, proper compliance with, and fulfillment of all schedules and deliverables specified within the body of this RFP. The State will not be responsible for the failure of any delivery medium for

submission of information to or from the Vendor, including but not limited to, public and private carriers, U.S. mail, Internet Service Providers, facsimile, or e-mail.

7. **Evaluation Criteria**

The State's intent in issuing this RFP is to award a contract to the lowest and best responsive Vendor who meets specifications, considering price and other factors. The Vendor's past performance, cooperation, and ability to provide service and training are general factors that will be weighed in the selection process. More specific information concerning evaluation criteria is presented in *Technical Specifications*.

8. **Multiple Awards**

ITS reserves the right to make multiple awards.

9. **Right to Award in Whole or Part**

ITS reserves the right to approve an award by individual items or in total, whichever is deemed to be in the best interest of the State of Mississippi.

10. **Right to Use Proposals in Future Projects**

The State reserves the right to evaluate the awarded proposal from this RFP, including all products and services proposed therein, along with the resulting contractual terms, for possible use in future projects if (a) it is deemed to be in the best interest of the State to do so; and (b) the Vendor is willing to extend a cost less than or equal to that specified in the awarded proposal and resulting contract. A decision concerning the utilization of a Vendor's proposal for future projects is solely at the discretion of the State and requires the agreement of the proposing Vendor. The State's decision to reuse an awarded proposal will be based upon such criteria as: (1) the customer's business requirements; (2) elapsed time since the award of the original project; and/or (3) research on changes in the Vendor, market, and technical environments since the initial award.

11. **Price Changes During Award or Renewal Period**

A price increase will not be accepted during the award period or the renewal period, unless stipulated in the contract. However, the State will always take advantage of price decreases.

12. **Right to Request Information**

The State reserves the right to request information relative to a Vendor's references and financial status and to visit a Vendor's facilities during normal working hours. The State also reserves the right to request a current financial statement, prepared and certified by an independent auditing firm, and reserves the right to require that Vendors document their financial ability to provide the products and services proposed up to the total dollar amount of the Vendor's cost proposal. The State reserves the right to request information about the Vendor from any previous customer of the Vendor of whom the State is aware, even if that customer is not included in the Vendor's list of references.

**13. Vendor Personnel**

For RFPs including professional services specifications, the Vendor will be required to provide and/or certify the following for each individual included in the Vendor's proposal:

- 13.1 A direct telephone number at which the individual may be contacted for a telephone interview. The State will pay toll charges in the continental United States. The Vendor must arrange a toll-free number for all other calls.
- 13.2 That, if onsite interviews are required, the individual can be at the specified location in Mississippi within the timeframe specified. All costs associated with onsite interviews will be the responsibility of the Vendor.
- 13.3 That the individual is proficient in spoken and written English;
- 13.4 That the individual is a U.S. citizen or that the individual meets and will maintain employment eligibility requirements in compliance with all INS regulations. The Vendor must provide evidence of identification and employment eligibility prior to the award of a contract that includes any personnel who are not U. S. citizens.
- 13.5 That the personnel assigned to a project will remain a part of the project throughout the duration of the contract as long as the personnel are employed by the Vendor, unless replaced by the Vendor at the request of the State. This requirement includes the responsibility for ensuring all non-citizens maintain current INS eligibility throughout the duration of the contract.

**14. Vendor Imposed Constraints**

The Vendor must specifically document what limitations, if any, exist in working with any other Contractor acting in the capacity of the State's business partner, subcontractor or agent who may be managing any present or future projects; performing quality assurance; integrating the Vendor's software; and/or providing web-hosting, hardware, networking or other processing services on the State's behalf. The project relationship may be based on roles as either equal peers; supervisory – subordinate; or subordinate – supervisory, as determined by the State. The State recognizes that the Vendor may have trade secrets, intellectual property and/or business relationships that may be subject to its corporate policies or agreements. The State must understand these issues in order to decide to what degree they may impact the State's ability to conduct business for this project. These considerations will be incorporated accordingly into the proposal evaluation and selection process. The understanding reached between the Vendor and the State with regard to this business relationship precludes the Vendor from imposing any subsequent limitations of this type in future project undertakings by the State.

**15. Best and Final Offer**

The State reserves the right to solicit Best and Final Offers (BAFOs) from Vendors, principally in situations in which proposal costs eclipse available funding or the State believes none of the competing proposals presents a Best Value (lowest and best proposal) opportunity. Because of the time and expense incurred by both the Vendor community and the State, BAFOs are not routinely conducted. Vendors should offer their best pricing with the initial solicitation. Situations warranting solicitation of a BAFO will be considered an exceptional practice for any procurement. Vendors that remain in a competitive range within an evaluation may be requested to tender Best and Final Offers, at the sole discretion of the State. All such Vendors will be provided an equal opportunity to respond with a Best and Final Offer under a procedure to be defined by the State that encompasses the specific, refined needs of a project, as part of the BAFO solicitation. The State may re-evaluate and amend the original project specifications should it be deemed necessary in order to improve the opportunity for attaining Best Value scenarios from among the remaining competing Vendors. All BAFO proceedings will be uniformly conducted, in writing and subject to solicitation by the State and receipt from the Vendors under a precise schedule.

**16. Restriction on Advertising**

The Vendor must receive written approval from the State before advertising or referencing the award of the contract or the services being provided. The Vendor must agree not to refer to awards in commercial advertising in such a manner as to state or imply that the firm or its services are endorsed or preferred by the State of Mississippi.

**17. Rights Reserved to Use Existing Product Contracts**

The State reserves the right on turnkey projects to secure certain products from other existing ITS contracts if it is in its best interest to do so. If this option is exercised, then the awarded Vendor must be willing to integrate the acquisition and implementation of such products within the schedule and system under contract.

**18. Additional Information to be Included**

In addition to answering each specification within this RFP, the Vendor must include complete product/service information, including product pictorials and technical/descriptive literature relative to any product/service offered with the proposal. Information submitted must be sufficiently detailed to substantiate that the products/services offered meet or exceed specifications.

**19. Valid Contract Required to Begin Work**

The successful Vendor should not commence any billable work until a valid contract has been executed. Any work done by the successful Vendor prior to the execution of the contract is done at the Vendor's sole risk. The State is under no obligation to pay for work done prior to the execution of a contract.

## SECTION IV LEGAL AND CONTRACTUAL INFORMATION

The objective of the *Legal and Contractual Information* section is to provide Vendors with information required to complete a contract or agreement with **ITS** successfully.

1. **Acknowledgment Precludes Later Exception**

By signing the *Submission Cover Sheet*, the Vendor is contractually obligated to comply with all items in this RFP, including the *Standard Contract* in Exhibit A if included herein, except those specifically listed as exceptions on the *Proposal Exception Summary Form*. If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions. Vendors who respond to this RFP by signing the *Submission Cover Sheet* may not later take exception to any item in the RFP during contract negotiations. This acknowledgement also contractually obligates any and all subcontractors that may be proposed. No exceptions by subcontractors or separate terms and conditions will be entertained after the fact.

2. **Failure to Respond as Prescribed**

Failure to respond as described in Section II: *Proposal Submission Requirements* to any item in the sections and exhibits of this RFP, including the *Standard Contract* attached as Exhibit A, if applicable, shall contractually obligate the Vendor to comply with that item.

3. **Contract Documents**

**ITS** will be responsible for all document creation and editorial control over all contractual documentation related to each procurement project. The following documents will normally be included in all contracts between **ITS** and the Vendor:

- 3.1 The *Proposal Exception Summary Form* as accepted by **ITS**;
- 3.2 Contracts which have been signed by the Vendor and **ITS**;
- 3.3 **ITS'** Request for Proposal, including all addenda;
- 3.4 Official written correspondence from **ITS** to the Vendor;
- 3.5 Official written correspondence from the Vendor to **ITS** when clarifying the Vendor's proposal; and
- 3.6 The Vendor's proposal response to the **ITS** RFP.

4. **Order of Precedence**

When a conflict arises regarding contract intent due to conflicting statements in documents included in the contract, the order of precedence of each document is as listed above unless modification of order is negotiated and agreed upon by both **ITS** and the winning Vendor.

**5. Additional Contract Provisions**

The contract will also include such additional provisions, which are not inconsistent or incompatible with the material terms of this RFP, as may be agreed upon by the parties. All of the foregoing shall be in such form and substance as prescribed by the State.

**6. Contracting Agent by Law**

The Executive Director of **ITS** is, by law, the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of computer and telecommunications equipment, systems, software, and services (Section 25-53-1, et seq., of the Mississippi Code Annotated). **ITS** is issuing this RFP on behalf of the procuring agency or institution. **ITS** and the procuring agency or institution are sometimes collectively referred to within this RFP as "State."

**7. Mandatory Legal Provisions**

- 7.1 The State of Mississippi is self-insured; all requirements for the purchase of casualty or liability insurance are deleted.
- 7.2 Any provisions disclaiming implied warranties shall be null and void. See Mississippi Code Annotated Sections 11-7-18 and 75-2-719(4). The Vendor shall not disclaim the implied warranties of merchantability and fitness for a particular purpose.
- 7.3 The Vendor shall have no limitation on liability for claims related to the following items:
  - 7.3.1 Infringement issues;
  - 7.3.2 Bodily injury;
  - 7.3.3 Death;
  - 7.3.4 Physical damage to tangible personal and/or real property; and/or
  - 7.3.5 The intentional and willful misconduct or negligent acts of the Vendor and/or Vendor's employees or subcontractors.
- 7.4 All requirements that the State pay interest (other than in connection with lease-purchase contracts not exceeding five years) are deleted.
- 7.5 Any contract negotiated under this RFP will be governed by and construed according to the laws of the State of Mississippi. Venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi.
- 7.6 Any contract negotiated under this RFP is cancelable in the event the funding authority does not appropriate funds. Notice requirements to Vendor cannot exceed sixty (60) days.

- 7.7 The State of Mississippi does not waive its sovereign immunities or defenses as provided by law by entering into this contract with the Vendor, Vendor agents, subcontractors, or assignees.
- 7.8 The State will deliver payments to the Vendor within forty-five (45) days after receipt of invoice and receipt, inspection, and approval of Vendor's products/services. No late charges will exceed 1.5% per month on any unpaid balance from the expiration of said period until payment is delivered. See Section 31-7-305 of the Mississippi Code Annotated. Seller understands and agrees that Purchaser is exempt from the payment of taxes.
- 7.9 The State shall not pay any attorney's fees, prejudgment interest or the cost of legal action to or for the Vendor.

**8. Approved Contract**

- 8.1 Award of Contract - A contract is considered to be awarded to a proposer once the proposer's offering has been approved as lowest and best proposal through:
  - 8.1.1 Written notification made to proposers on **ITS** letterhead, or
  - 8.1.2 Notification posted to the **ITS** website for the project, or
  - 8.1.3 CP-1 authorization executed for the project, or
  - 8.1.4 The **ITS** Board's approval of same during an open session of the Board.
- 8.2 **ITS** statute specifies whether **ITS** Director approval or **ITS** Board approval is applicable for a given project, depending on the total lifecycle cost of the contract.
- 8.3 A contract is not deemed final until five (5) working days after either the award of contract or post procurement review, as stipulated in the **ITS** Protest Procedure and Policy. In the event of a valid protest, the State may, at its sole discretion, continue the procurement or stay the procurement in accordance with the **ITS** Protest Procedure and Policy. If the procurement is stayed, the contract is not deemed final until the protest is resolved.

**9. Contract Validity**

All contracts are valid only if signed by the Executive Director of **ITS**.

**10. Order of Contract Execution**

Vendors will be required to sign contracts and to initial all contract changes before the Executive Director of **ITS** signs.



**11. Availability of Funds**

All contracts are subject to availability of funds of the acquiring State entity and are contingent upon receipt by the winning Vendor of a purchase order from the acquiring State entity.

**12. CP-1 Requirement**

All purchase orders issued for goods and services acquired from the awarded Vendor under this RFP must be encoded by the Customer agency with a CP-1 approval number assigned by **ITS**. This requirement does not apply to acquisitions that by policy have been delegated to State entities.

**13. Requirement for Electronic Payment and Invoicing**

13.1 Payments to the awarded Vendor for all goods and services acquired under this RFP by state agencies that make payments through the Statewide Automated Accounting System (“SAAS”) will be made electronically, via deposit to the bank account of the Vendor’s choice. The awarded Vendor must enroll and be activated in PayMode™, the State’s current vehicle for sending and receiving electronic payments, prior to receiving any payments from state agencies. There is no charge for a Vendor to enroll or receive payments via PayMode. For additional information on PayMode, including registration instructions, Vendors should visit the following website: <http://portal.paymode.com/ms/>. Vendors may also request assistance from the Mississippi Management and Reporting System (MMRS) Call Center regarding PayMode registration by contacting [mash@dfa.state.ms.us](mailto:mash@dfa.state.ms.us).

13.2 For state agencies that make payments through SAAS, the awarded Vendor is required to submit electronically all invoices for goods and services acquired under this RFP, along with appropriate supporting documentation, as directed by the State. Should the requirement for electronic invoicing be implemented during the term of the project contract, the State will work with the Vendor to determine a reasonable timeframe for initiating electronic invoicing.

13.3 Items 13.1 and 13.2 only apply to state agencies that make payments through SAAS. Payments and invoices for all other entities will conform to their standard methods of payment to contractors.

**14. Time For Negotiations**

14.1 All contractual issues must be successfully negotiated within fifteen (15) working days from the Vendor’s initial receipt of the project contract from **ITS**, unless **ITS** consents to extend the period. Failure to complete negotiations within the stated time period constitutes grounds for rejection of the Vendor’s response to this RFP. **ITS** may withdraw the proposal award and begin negotiations with the next ranked Vendor immediately or pursue any other option.

14.2 Negotiations shall be limited to items to which the Vendor has noted as exceptions on their Proposal Exception Summary Form, as well as any new items that the State may require. All contract changes requested by the Vendor related to such exceptions noted in Vendor's proposal shall be submitted three (3) working days prior to scheduled negotiations, unless **ITS** consents to a different period.

15. **Prime Contractor**

The selected Vendor will be designated the prime contractor in the proposal, and as such, shall be solely responsible for all products/services offered in the proposal and for the fulfillment of the contract with the State.

16. **Sole Point of Contact**

**ITS** will consider the selected Vendor to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.

16.1 The Vendor must acknowledge and agree that in matters of proposals, clarifications, negotiations, contracts and resolution of issues and/or disputes, the Vendor represents all contractors, third parties and/or subcontractors the Vendor has assembled for this project. The Vendor's commitments are binding on all such parties and consequently the State is only required to negotiate with the Vendor.

16.2 Furthermore, the Vendor acknowledges and agrees to pass all rights and/or services related to all general consulting, services leasing, software licensing, warranties, hardware maintenance and/or software support to the State from any contractor, third party or subcontractor without the State having to negotiate separately or individually with any such parties for these terms or conditions.

16.3 Should a proposing Vendor wish to assign payment of any or all charges resulting from this contract to a third party, Vendor must disclose that fact in his/her proposal, along with the third party's name, address, nature of business, and relationship to the proposing Vendor, the reason for and purpose of the assignment, and all conditions of the assignment, including but not limited to a copy of an assignment document to be executed by the State, the Vendor, and the third party. Such assignments will be accepted or rejected at the sole discretion of the State. Vendor must clearly and definitively state in his/her proposal whether the proposal is contingent upon the requested assignment of payments. Whenever any assignment of payment is requested, the proposal, contract, and assignment document must include language specifically guaranteeing that the proposing Vendor is solely and fully liable and responsible for the performance of its obligations under the subject contract. No assignment of payment will be considered at the time of purchase unless such assignment was fully disclosed in the Vendor's proposal and subsequently accepted by the State.

**17. ITS Approval of Subcontractor Required**

Unless provided in the contract, the Vendor shall not contract with any other party for furnishing any of the contracted work or services without the consent, guidance, and written approval of the State. **ITS** reserves the right of refusal and the right to request replacement of a subcontractor due to unacceptable work or conduct. This provision should not be interpreted as requiring the approval of individual contracts of employment between the Vendor and personnel assigned for services under the contract.

**18. Inclusion of Subcontract Agreements**

Copies of any agreements to be executed between the Vendor and any subcontractors must be included in the Vendor's proposal.

**19. Negotiations with Subcontractor**

In order to protect the State's interest, **ITS** reserves the right to attempt to resolve the contractual disagreements that may arise between the Vendor and its subcontractor after award of the contract.

**20. References to Vendor to Include Subcontractor**

All references in the RFP to "Vendor" shall be construed to encompass both the Vendor and its subcontractors.

**21. Outstanding Vendor Obligations**

- 21.1 Any Vendor who presently owes the State of Mississippi money pursuant to any contract for which **ITS** is the contracting agent and who has received written notification from **ITS** regarding the monies owed, must submit, with the proposal, a certified check in the amount due and owing in order for the proposal in response to this RFP to be considered. For a Vendor currently in bankruptcy as of the RFP submission date, this requirement is met, if and only if, **ITS** has an active petition before the appropriate bankruptcy court for recovery of the full dollar amount presently owed to the State of Mississippi by that Vendor. If the Vendor has emerged from bankruptcy by the RFP submission date, the Vendor must pay in full any amount due and owing to the State, as directed in the court-approved reorganization plan, prior to any proposal being considered.
- 21.2 Any Vendor who is presently in default on existing contracts for which **ITS** is the contracting agent, or who otherwise is delinquent in the performance of any such contracted obligations, is in the sole judgment of the State required to make arrangement for fulfilling outstanding obligations to the satisfaction of the State in order for the proposal to be considered.
- 21.3 The State, at its sole discretion, may reject the proposal of a Vendor with any significant outstanding financial or other obligations to the State or who is in bankruptcy at the time of proposal submission.

22. **Equipment Condition**

For all RFPs requiring equipment, the Vendor must furnish only new equipment in response to **ITS** specifications, unless an explicit requirement for used equipment is otherwise specified.

23. **Delivery Intervals**

The Vendor's proposal must specify, in the *Cost Information Submission* and in response to any specific instructions in the *Technical Specifications*, delivery and installation intervals after receipt of order.

24. **Pricing Guarantee**

The Vendor must explicitly state, in the *Cost Information Submission* and in response to any specific instructions in the *Technical Specifications*, how long the proposal will remain valid. Unless stated to the contrary in the *Technical Specifications*, pricing must be guaranteed for a minimum of ninety (90) days.

25. **Shipping Charges**

For all RFPs requiring shipment of any product or component, all products must be delivered FOB destination to any location within the geographic boundaries of the State with all transportation charges prepaid and included in the RFP proposal or LOC quotation. Destination is the point of use.

26. **Amortization Schedule**

For all RFPs requiring equipment, contracts involving the payment of interest must include an amortization schedule clearly documenting the amount of interest payable over the term of the contract.

27. **Americans with Disabilities Act Compliance for Web Development and Portal Related Services**

All Web and Portal development work must be designed and implemented in compliance with the Electronic and Information Technology Accessibility Standards associated with Section 508 of the Rehabilitation Act and with the Web Accessibility Initiative (WAI) of the W3C.

28. **Ownership of Developed Software**

28.1 When specifications require the Vendor to develop software for the State, the Vendor must acknowledge and agree that the State is the sole owner of such developed software with exclusive rights to use, alter, or distribute the software without restriction. This requirement applies to source code, object code, and documentation.

28.2 The State may be willing to grant the Vendor a nonexclusive license to use the State's software subject to devising acceptable terms and license fees. This requirement is a matter of State Law, and not negotiable.

29. **Ownership of Custom Tailored Software**

In installations where the Vendor's intellectual property is modified and custom-tailored to meet the needs of the State, the Vendor must offer the State an application license entitling the State to use, and/or alter the software without restriction. These requirements apply to source code, object code and documentation.

30. **Terms of Software License**

The Vendor acknowledges and agrees that the term of all software licenses provided to the State shall be perpetual unless stated otherwise in the Vendor's proposal.

31. **The State is Licensee of Record**

The Vendor must not bypass the software contracting phase of a project by licensing project software intended for State use in its company name. Upon award of a project, the Vendor must ensure that the State is properly licensed for all software that is proposed for use in a project.

32. **Compliance with Enterprise Security Policy**

Any solution proposed in response to this RFP must be in compliance with the State of Mississippi's Enterprise Security Policy. The Enterprise Security Policy is based on industry-standard best practices, policy, and guidelines and covers the following topics: web servers, email, virus prevention, firewalls, data encryption, remote access, passwords, servers, physical access, traffic restrictions, wireless, laptop and mobile devices, disposal of hardware/media, and application assessment/certification. Given that information security is an evolving technology practice, the State reserves the right to introduce new policy during the term of the contract resulting from this RFP and require the Vendor to comply with same in the event the industry introduces more secure, robust solutions or practices that facilitate a more secure posture for the State of Mississippi.

The Enterprise Security Policy is available to third parties on a need-to-know basis and requires the execution of a non-disclosure agreement prior to accessing the policy. The Vendor may request individual sections of the Enterprise Security Policy or request the entire document. Prior to the Vendor receiving the requested policy information, the Vendor must sign and submit the non-disclosure agreement found on the ITS website, <http://www.its.ms.gov>, as follows: click on the "ITS Services" button on the left of the screen; select "Information Security", scroll to the bottom of the page, and click on the link "Enterprise Security Policy" under "Policies and Plans". The form can be found at the "Enterprise Security Policy" link under the "Third Party" heading. The complete web address is shown below:

[http://www.its.ms.gov/security/docs/confidentiality\\_agreement\\_for\\_its\\_esp\\_for\\_web.pdf](http://www.its.ms.gov/security/docs/confidentiality_agreement_for_its_esp_for_web.pdf)  
Vendor must provide contact information (name, email address, phone number) that can be used to coordinate the secure delivery of the requested information.

33. **Negotiating with Next-Ranked Vendor**

Should the State cease doing business with any Vendor selected via this RFP process, for any reason, the State reserves the right to initiate negotiations with the next ranked Vendor.

34. **Disclosure of Proposal Information**

Vendors should be aware that any information in a proposal may be subject to disclosure or reproduction under the Mississippi Public Records Act of 1983, defined in Section 25-61-1 et seq. of the Mississippi Code Annotated. All disclosures of proposal information will be made in compliance with the **ITS** Public Records Procedures established in accordance with the Mississippi Public Records Act. The **ITS** Public Records Procedures are available in Section 019-010 of the **ITS** Procurement Handbook, on the **ITS** Internet site at: <http://dsitspe01.its.ms.gov/its/procman.nsf/TOC4?OpenView> or from **ITS** upon request.

As outlined in the Third Party Information section of the **ITS** Public Records Procedures, **ITS** will give written notice to any affected Vendor of a request to view or reproduce the Vendor's proposal or portion thereof. **ITS** will not, however, give such notice with respect to summary information prepared in connection with the State's review or evaluation of a Vendor's proposal, including, but not limited to, written presentations to the **ITS** Board or other approving bodies, and/or similar written documentation prepared for the project file. In addition, **ITS** will not provide third-party notice for requests for any contract executed as a result of this RFP, with the exception of information contained in contract exhibits identified and labeled as confidential during the contract negotiation process. **ITS** will provide third-party notice of requests for any such confidential exhibits to allow Vendor the opportunity to protect the information by court order as outlined in the **ITS** Public Records Procedures.

Summary information and contract terms, as defined above, become the property of **ITS**, who has the right to reproduce or distribute this information without notification.

Vendors should further be aware that requests for disclosure of proposal and contract information are sometimes received by **ITS** significantly after the proposal opening date. **ITS** will notify the signatory "Officer in Bind of Company" provided in Section I of this RFP for Notification of Public Records Requests in the event information is requested that your company might wish to consider protecting as a trade secret or as confidential commercial or financial information. If the "Officer in Bind of Company" should not be used for notification of public records requests, Vendor should provide the alternative contact information in response to this RFP item.

35. **Risk Factors to be Assessed**

The State will assess risk factors that may initially exist within a given procurement and that may develop over the course of a procurement process as facts become known. The State, at its sole discretion, may employ the following mechanisms in mitigating these risks: proposal bonding, performance bonding, progress payment plan with retainage, inclusion of liquidated damages, and withholding payment for all portions of the products/services acquired until final acceptance. The Vendor must agree to incorporate any or all of the above terms and conditions into the customer agreement.

36. **Proposal Bond**

The Vendor is not required to include a proposal bond with its RFP proposal.

37. **Performance Bond/Irrevocable Bank Letter of Credit**

The Vendor must include the price of a performance bond or irrevocable bank letter of credit with its RFP proposal. If required, the cost of the bond or letter of credit must be shown as a separate line item in the *Cost Information Submission*. The performance bond or letter of credit must be procured at the Vendor's expense prior to the execution of the contract and may be invoiced to Mississippi Secretary of State's Office after contract initiation only if itemized in the *Cost Information Submission* and in the executed contract. **The final decision as to the requirement for a Performance Bond or Irrevocable Bank Letter of Credit will be made upon contract award and is at the State's sole discretion.**

The Vendor must procure and submit to **ITS**, on behalf of **Mississippi Secretary of State's Office**, with the executed contract, (a) a performance bond from a reliable surety company authorized to do business in the State of Mississippi or (b) an irrevocable bank letter of credit that is acceptable to the State. The Performance Bond or the Irrevocable Letter of Credit shall be for the total amount of the contract or an amount mutually agreed upon by the State and the successful Vendor and shall be payable to **Mississippi Secretary of State's Office**, to be held by their contracting agent, the Mississippi Department of Information Technology Services. No contract resulting from this RFP will be valid until the required Performance Bond or Irrevocable Bank Letter of Credit has been received and found to be in proper form and amount. The Vendor agrees that the State has the right to request payment for a partial amount or the full amount of the Irrevocable Letter of Credit/Performance bond should the products/services being procured hereunder not be provided in a manner consistent with this RFP and the Vendor's proposal by the delivery dates agreed upon by the parties. The State may demand payment by contacting the bank issuing the letter of credit or the bonding company issuing the performance bond and making a written request for full or partial payment. The issuing bank/bonding company is required to honor any demand for payment from the State within fifteen (15) days of notification. The letter of credit/performance bond shall cover the entire contract period, with the exception of post-warranty maintenance and support, and shall not be released until final acceptance of all products and deliverables required herein or until the warranty period, if any, has expired, whichever occurs last. If applicable, and at the State's sole discretion, the State may, at any time during the warranty period, review Vendor's performance and performance of the products/services delivered and determine that the letter of credit/performance bond may be reduced or released prior to expiration of the full warranty period.

38. **Responsibility for Behavior of Vendor Employees/Subcontractors**

The Vendor will be responsible for the behavior of all its employees and subcontractors while on the premises of any State agency or institution. Any Vendor employee or subcontractor acting in a manner determined by the administration of any State agency or institution to be detrimental, abusive, or offensive to any of the staff or student body of

any State agency or institution will be asked to leave the premises and can be suspended from further work on the premises.

39. **Protests**

The Executive Director of **ITS** and/or the Board Members of **ITS** or their designees shall have the authority to resolve Vendor protests in connection with the selection for award of a contract. Copies of the protest procedures are available on the **ITS** Internet site - **ITS** Protest Procedure and Policy, Section 019-020, **ITS** Procurement Handbook at: <http://dsitspe01.its.ms.gov/its/procman.nsf/TOC4?OpenView> or from **ITS** upon request.

40. **Protest Bond**

Potential Vendors may protest any of the specifications of this RFP on the belief that the specification is unlawful, unduly restrictive, or unjustifiably restraining to competition. Any such protest must be in writing and submitted to the **ITS** Executive Director along with the appropriate protest bond within five (5) working days of the Official Release of the RFP, as defined in the **ITS** Protest Procedure and Policy. The outside of the envelope must be marked "Protest" and must specify RFP number 3643.

As a condition precedent to filing any protest related to this procurement, the Vendor must procure, submit to the **ITS** Executive Director with its written protest, and maintain in effect at all times during the course of the protest or appeal thereof, a protest bond in the full amount of the total estimated project lifecycle cost. The total estimated project lifecycle cost will be the amount used by **ITS** in the computation of cost points, as the low cost in the denominator of the cost evaluation formula. The bond shall be accompanied by a duly authenticated or certified document evidencing that the person executing the bond is a licensed Mississippi agent for the bonding company. This certified document shall identify the name and address of the person or entity holding the protest bond and shall identify a contact person to be notified in the event that the State is required to take action against the bond. The protest bond shall not be released to the protesting Vendor until the protest is finally resolved and the time for appealing said protest has expired. The protest bond shall be procured at the protesting Vendor's expense and be payable to the Mississippi Department of Information Technology Services. Prior to approval of the protest bond, **ITS** reserves the right to review the protest bond and require the protesting Vendor to substitute an acceptable bond in such form as the State may reasonably require. The premiums on such bond shall be paid by the protesting Vendor. The State may claim against the protest bond as specified in Section 25-53-5 (n) of the Mississippi Code of 1972, as amended during the 1998 Mississippi legislative session, in addition to all other rights and remedies the State may have at law or in equity.

Should the written protest submitted by the Vendor fail to comply with the content requirements of **ITS'** protest procedure and policy, fail to be submitted within the prescribed time limits, or fail to have the appropriate protest bond accompany it, the protest will be summarily dismissed by the **ITS** Executive Director.

41. **Mississippi Employment Protection Act**



Effective July 1, 2008, Vendor acknowledges that if awarded, it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008), and will register and participate in the status verification system for all newly hired employees. The term “employee” as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Vendor will agree to maintain records of such compliance and, upon request of the State, to provide a copy of each such verification to the State.

Vendor acknowledges and certifies that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi.

Vendor acknowledges that violating the E-Verify Program (or successor thereto) requirements subjects Vendor to the following: (a) cancellation of any state or public contract and ineligibility for any state or public contract for up to three (3) years, with notice of such cancellation being made public, or (b) the loss of any license, permit, certification or other document granted to Vendor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. Vendor would also be liable for any additional costs incurred by the State due to contract cancellation or loss of license or permit.

## SECTION V PROPOSAL EXCEPTIONS

Please return the *Proposal Exception Summary Form* at the end of this section with all exceptions to items in any Section of this RFP listed and clearly explained or state “No Exceptions Taken.” If no *Proposal Exception Summary Form* is included, the Vendor is indicating that he takes no exceptions to any item in this RFP document.

1. Unless specifically disallowed on any specification herein, the Vendor may take exception to any point within this RFP, including a specification denoted with “shall” or “must,” as long as the following are true:
  - 1.1 The specification is not a matter of State law;
  - 1.2 The proposal still meets the intent of the RFP;
  - 1.3 A *Proposal Exception Summary Form* is included with Vendor’s proposal; and
  - 1.4 The exception is clearly explained, along with any alternative or substitution the Vendor proposes to address the intent of the specification, on the *Proposal Exception Summary Form*.
2. The Vendor has no liability to provide items to which an exception has been taken. **ITS** has no obligation to accept any exception. During the proposal evaluation and/or contract negotiation process, the Vendor and **ITS** will discuss each exception and take one of the following actions:
  - 2.1 The Vendor will withdraw the exception and meet the specification in the manner prescribed;
  - 2.2 **ITS** will determine that the exception neither poses significant risk to the project nor undermines the intent of the RFP and will accept the exception;
  - 2.3 **ITS** and the Vendor will agree on compromise language dealing with the exception and will insert same into the contract; or
  - 2.4 None of the above actions is possible, and **ITS** either disqualifies the Vendor’s proposal or withdraws the award and proceeds to the next ranked Vendor.
3. Should **ITS** and the Vendor reach a successful agreement, **ITS** will sign adjacent to each exception which is being accepted or submit a formal written response to the *Proposal Exception Summary* responding to each of the Vendor’s exceptions. The *Proposal Exception Summary*, with those exceptions approved by **ITS**, will become a part of any contract on acquisitions made under this RFP.

4. An exception will be accepted or rejected at the sole discretion of the State.
5. The State desires to award this RFP to a Vendor or Vendors with whom there is a high probability of establishing a mutually agreeable contract, substantially within the standard terms and conditions of the State's RFP, including the *Standard Contract* in Exhibit A, if included herein. As such, Vendors whose proposals, in the sole opinion of the State, reflect a substantial number of material exceptions to this RFP, may place themselves at a comparative disadvantage in the evaluation process or risk disqualification of their proposals.
6. For Vendors who have successfully negotiated a contract with **ITS** in the past, **ITS** requests that, prior to taking any exceptions to this RFP, the individual(s) preparing this proposal first confer with other individuals who have previously submitted proposals to **ITS** or participated in contract negotiations with **ITS** on behalf of their company, to ensure the Vendor is consistent in the items to which it takes exception.

### PROPOSAL EXCEPTION SUMMARY FORM

**List and clearly explain any exceptions, for all RFP Sections and Exhibits, in the table below.**

<b>ITS RFP Reference</b>	<b>Vendor Proposal Reference</b>	<b>Brief Explanation of Exception</b>	<b>ITS Acceptance (sign here only if accepted)</b>
(Reference specific outline point to which exception is taken)	(Page, section, items in Vendor's proposal where exception is explained)	(Short description of exception being made)	
1.			
2.			
3.			
4.			
5.			
6.			
7.			

## SECTION VI RFP QUESTIONNAIRE

Please answer each question or provide the information as requested in this section.

1. **Statewide Automated Accounting System (SAAS) Information for State of Mississippi Vendor File**

- 1.1 **SAAS Vendor Code:** Any Vendor who has not previously done business with the State and has not been assigned a SAAS Vendor code should furnish a signed copy of an IRS W-9 form with the proposal. A copy of the W-9 Form can be obtained by going to the ITS website, <http://www.its.ms.gov>, clicking on the "Procurement" button to the left of the screen, selecting "Vendor Information", scrolling to the bottom of the page, and clicking on the link "Forms Required in RFP Responses." Vendors who have previously done business with the State should furnish ITS with their SAAS Vendor code.

SAAS Vendor Code: \_\_\_\_\_ OR Signed W-9 Form Attached: \_\_\_\_\_

- 1.2 **Vendor Self-Certification Form:** The State of Mississippi, in an effort to capture participation by minority Vendors, asks that each Vendor review the State of Mississippi Minority Vendor Self Certification Form. This information is for tracking/reporting purposes only, and will not be used in determining which Vendor will be chosen for the project. Any Vendor who can claim status as a Minority Business Enterprise or a Woman Business Enterprise in accordance with the definitions on this form and who has not previously submitted a form to the State of Mississippi should submit the completed form with the proposal. A copy of the Minority Vendor Self-Certification Form can be obtained at: [http://www.mississippi.org/assets/docs/minority/minority\\_vendor\\_selfcertform.pdf](http://www.mississippi.org/assets/docs/minority/minority_vendor_selfcertform.pdf). Please direct any questions about minority certification in Mississippi to the Minority Business Enterprise Division of the Mississippi Development Authority by telephone at (601) 359-3448 or via email at [minority@mississippi.org](mailto:minority@mississippi.org).

Minority Vendor Self-Certification Form Included: \_\_\_\_\_  
Minority Vendor Self-Certification Form Previously Submitted: \_\_\_\_\_  
Not claiming Minority or Women Business Enterprise Status: \_\_\_\_\_

2. **Certification of Authority to Sell**

The Vendor must certify Vendor is a seller in good standing, authorized to sell and able to deliver all items and related services proposed in the State of Mississippi in the time frame specified. Does the Vendor make these certifications? (A yes or no answer is required.)



Remit Address (if different):

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7. **Web Amendments**

As stated in Section III, **ITS** will use the **ITS** website to post amendments regarding RFPs before the proposal opening at [http://www.its.ms.gov/rfps/rfps\\_awaiting.shtml](http://www.its.ms.gov/rfps/rfps_awaiting.shtml). We will post clarifications until noon seven days prior to the proposal opening date listed on the cover page of this RFP or the posted extension date, if applicable.

Vendors may list any questions or items needing clarification discovered in the week prior to the proposal opening in a written format at the beginning of the proposal binder or in the comment section for the individual offering.

Does the Vendor certify that they have reviewed a copy of the **ITS** amendments for RFPs as above stated? (A yes or no answer is required.)

## **SECTION VII TECHNICAL SPECIFICATIONS**

### **1. How to Respond to this Section**

- 1.1 Beginning with Item 2.1 of this section, label and respond to each outline point in this section as it is labeled in the RFP.
- 1.2 The Vendor must respond with “ACKNOWLEDGED,” “WILL COMPLY” or “AGREED” to each point in this section. In addition, many items in this RFP require detailed and specific responses to provide the requested information. Failure to provide the information requested will result in the Vendor receiving a lower score for that item, or, at the State’s sole discretion, being subject to disqualification.
- 1.3 “ACKNOWLEDGED” should be used when no vendor response or vendor compliance is required. “ACKNOWLEDGED” simply means the vendor is confirming to the State that he read the statement. This is commonly used in the RFP sections where the agency’s current operating environment is described or where general information is being given about the project.
- 1.4 “WILL COMPLY” or “AGREED” are used interchangeably to indicate that the vendor will adhere to the requirement. These terms are used to respond to statements that specify that a vendor or vendor’s proposed solution must comply with a specific item or must perform a certain task.
- 1.5 If the Vendor cannot respond with “ACKNOWLEDGED,” “WILL COMPLY,” or “AGREED,” then the Vendor must respond with “EXCEPTION.” (See Section V, for additional instructions regarding Vendor exceptions.)
- 1.6 Where an outline point asks a question or requests information, the Vendor must respond with the specific answer or information requested.
- 1.7 In addition to the above, Vendor must provide explicit details as to the manner and degree to which the proposal meets or exceeds each specification.

### **2. Mandatory Provisions or No Mandatory Provisions in Technical Requirements for this RFP**

- 2.1 Certain items in the technical specifications of this RFP are MANDATORY. Vendors are specifically disallowed from taking exception to these mandatory requirements, and proposals that do not meet all mandatory requirements are subject to immediate disqualification, at the sole discretion of the State.
- 2.2 The proposed application must be Help America Vote Act (HAVA) compliant.



- 2.3 Vendor must have experience with major voting equipment vendors, such as but not limited to, TSX Voting Devices.
- 2.4 Vendor's proposed application must be completely web-based.
- 2.5 The application and its data must reside with MSOS.

3. **General Overview and Background**

The Mississippi Secretary of State's Office (MSOS) is seeking to acquire a web-based online training system. The Secretary of State is the Chief Election Officer for the State of Mississippi and is required to prescribe mandatory training for elections officials. According to 23-15-239 (b) The executive committee of each county, in the case of a primary election, or the commissioners of election of each county, in the case of all other elections, in conjunction with the circuit clerk, shall sponsor and conduct annually an eight-hour training course for managers that meets criteria that the Secretary of State shall prescribe. Managers shall be required to attend this course every four (4) years as of August 7, 2008. The Secretary of State shall develop a version of the course that may be taken by managers over the Internet. Training courses, including, but not limited to, online training courses, that meet criteria prescribed by the Secretary of State and are not sponsored or conducted by the executive committee or the commissioners of election, may be utilized to meet the requirements of this paragraph if the training course is approved by the Secretary of State.

The Mississippi State Elections Division has many roles in assuring that Mississippians' voices are heard clearly through the election process. These roles include training elections officials, collecting campaign finance and lobbying reports, managing the statewide voter registry, collecting election returns, and assisting local election officials in carrying out their election related responsibilities. This division also provides technical assistance to the public and officials as well as legal counsel to the Secretary of State.

This project is being funded by the Help America Vote Act (HAVA).

#### 4. Procurement Project Schedule

Task	Date
First Advertisement Date for RFP	12/07/10
Second Advertisement Date for RFP	12/14/10
Deadline for Vendor's Written Questions	3:00 P.M. Central Time on 12/30/10
Deadline for Questions Answered and Posted to ITS Web Site	01/12/11
Open Proposals	01/21/11 3:00 P.M. Central Time
Evaluation of Proposals	01/24/11
Vendor Presentations/Demonstrations	02/03/11 – 02/04/11
Estimated to Begin Contract Negotiations	02/08/11
Proposed Project Implementation Start-up	03/01/11

#### 5. Statements of Understanding

- 5.1 Vendor must deliver a written document to Tangela Harrion at ITS by Thursday, December 30, 2010 at 3:00 p.m. Central Time. This document may be delivered by hand, mail, email, or fax. Address information is given on page one of this RFP. The fax number is (601) 354-6016. **ITS WILL NOT BE RESPONSIBLE FOR DELAYS IN THE DELIVERY OF QUESTION DOCUMENTS.** It is solely the responsibility of the vendor that the clarification document reaches ITS on time. Vendors may contact Tangela Harrion to verify the receipt of their document. Documents received after the deadline will be rejected.
- 5.2 MSOS currently uses the I votronic, Automark, TSX, and the M100 by ES&S, and the Winvote by Advance Voting Solutions.

#### 6. Vendor Qualifications

- 6.1 The Vendor must provide a description of his organization with sufficient information to substantiate proven expertise in the products and services being requested in this RFP. Information to be provided includes, but is not limited to:
- 6.1.1 The location of its principal office and the number of executive and professional personnel employed at this office;
- 6.1.2 The number of years the Vendor has been in business;

- 6.1.3 The number of years the Vendor has been providing the products and services being proposed;
- 6.1.4 The Vendor's relationship to any parent firms, sister firms, or subsidiaries; and
- 6.1.5 Disclosure of any company restructuring, mergers, and acquisitions over the past 3 years that have impacted any products the Vendor has included in this proposal.
- 6.2 Vendor must disclose any sub-contractors who will be partnering with them to provide any part of the proposed solution (for example, sub-contractor XYZ will provide implementation services).
- 6.3 Vendor must provide dedicated account management personnel.
- 6.4 Vendor must provide information in the proposal on the Vendor's background and experience with all major voting equipment vendors. This detail must include:
  - 6.4.1 A list of all the Vendors with whom the Vendor has voting equipment experience; and,
  - 6.4.2 A description of the type of experience with the Vendors listed and their equipment.
- 6.5 Vendor must state relationships and list mutual clients it has with ES&S (formerly Premier) if any. Additional consideration may be given for Vendors that have relationships and mutual clients with ES&S.
- 6.6 Vendor must describe its previous experience developing content for ES&S (formerly Premier) if any. Additional consideration may be given for Vendors that have previous experience developing content for ES&S.
- 6.7 Vendor must have experience working with governmental states and counties. This detail must include:
  - 6.7.1 A list of the states and counties; and
  - 6.7.2 A description of the Vendor's experience working with the largest three (3) counties and states listed in Item 6.7.1.
- 6.8 Vendor must have Masters Level Adult Education Professionals on staff.
  - 6.8.1 Vendor must submit proof of degree for each staff member assigned to work on this project along with his proposal.

- 6.9 Vendor must submit a preliminary project work plan (that minimally includes tasks, estimated starting and ending dates, and project resources) using either Microsoft Project or Gantt chart format with their proposal submission.

**7. General Requirements**

**7.1 Accessibility**

- 7.1.1 The proposed application must be available 24/7.
- 7.1.2 The proposed application must be web-based and operate on Windows compatible computers utilizing a current version of Internet Explorer.
- 7.1.3 It is desirable that the browser-based product, require only the server computer to have the software installed.
- 7.1.4 It is also desirable that all users must interface with the software through a web browser and not require installation of any other software on the client computers. Client computers must require only a standard web browser and Internet access to the server.
- 7.1.5 Vendor must specify all supported screen resolutions.

- 7.2 MSOS will purchase or use existing hardware to host the system. The Vendor must furnish: (1) Minimum server, computer/PC system, and browser technical specifications, and (2) Recommended server, computer/PC system, and browser technical specifications for the proposed system.

- 7.3 The proposed application must accommodate a minimum of 10,000 registered users.

- 7.4 The proposed application must accommodate 2,000 simultaneous users. The Vendor must identify the maximum number of concurrent users and describe the maximum system load that the standard system will support.

- 7.5 The Vendor must agree that, notwithstanding anything to the contrary in this agreement, MSOS shall have the right to reproduce any and all physical documentation supplied under the terms of the agreement resulting from this RFP, provided, however, that such reproduction shall be for the sole use of the MSOS and shall be subject to the same restrictions or use and disclosure as are contained elsewhere in the agreement resulting from this RFP.

- 7.6 The Vendor must provide the system's expected response time to a command.

**7.7 Security/Requirements**

- 7.7.1 The system must be secure and allow multiple levels of access for administrators and staff based on role, allowing a user to access all components of the system allowed under the user's security designation. Vendor must describe these levels in the proposal submitted in response to this RFP.
- 7.7.2 It is desirable that individual users/operators must be able to change their own password at any time. Passwords must be accessible only by the owner and they must be encrypted when being entered on the logon screen.
- 7.7.3 It is also desirable that the system provides a unified login that allows a user to access all components of the system allowed under the user's security designation.

## **8. Application Functional Requirements**

Vendors must respond to Item 8 in the Requirements Matrix provided in Exhibit B according to the instructions provided in the instructions tab of the Excel spreadsheet. Failure to provide a response according to the instructions in Exhibit B may result in the Vendor proposal being rejected.

These Voting systems requirements are for the Ivotronic, Automark, TSX, and the M100 by ES&S, and the Winvote by Advance Voting Solutions.

## **9. Documentation/Training /Knowledge Transfer**

- 9.1 Vendor must provide any documentation necessary to maintain the proposed application.
- 9.2 Vendor must provide knowledge transfer for a minimum of three MSOS staff.
- 9.3 Vendor must describe the types of classes offered, (operation, technical, Admin, etc.) on their proposed application, to include the following details:
  - 9.3.1 Detailed description of the class;
  - 9.3.2 Maximum number of people in a class;
  - 9.3.3 Number of days and/or hours; and
  - 9.3.4 Indicate if on-site or web-based or both.

## **10. Warranty/Maintenance/Support**

- 10.1 Vendor must provide warranty support for the proposed system and fully describe what this support includes (product updates, remote diagnostic support, etc.).
- 10.2 Technical Support/Help Desk must be available via toll free telephone and email address Monday through Sunday, 8:00 a.m. to 10:00 p.m (Central Time).
  - 10.2.1 Vendor must state their Holiday schedule or any days that Technical Support/Help Desk is not available.
- 10.3 Vendor must notify MSOS via email of any scheduled or unscheduled down time. However, a limited scheduled maintenance window is acceptable.
- 10.4 Vendor must propose terms of Service Level Agreement (SLA) for performance and availability. The SLA should include the following:
  - 10.4.1 Service level targets;
  - 10.4.2 Thresholds to trigger penalties;
  - 10.4.3 Service level metrics should be clearly defined and supported by examples; and
  - 10.4.4 Any penalties must be clearly defined and explained.

## 11. **Cost Proposal Requirements**

- 11.1 The cost proposal must be packaged separately and include the information as requested in Section VIII, *Cost Information Submission*, relative to the costs proposed to accomplish the proposed project. An original and three (3) copies of the Cost Proposal are required.
- 11.2 Vendor must name the proposed application, identify all cost associated with this application, and list them in Section VIII, *Cost Information Submission*.
- 11.3 Vendor must identify all cost associated with providing classes to train MSOS staff on the proposed application in Section VIII, *Cost Information Submission*.
- 11.4 Vendors must include Change Order Rate(s) as part of their *Cost Information Submission* for additional tasks and work that may be required.

## 12. **Additional Requirements**

- 12.1 ITS acknowledges that the specifications within this RFP are not exhaustive. Rather, they reflect the known requirements that must be met by the proposed

system. Vendors must specify, here, what additional components may be needed and are proposed in order to complete each configuration.

### 13. **Proposal Evaluation Methodology**

13.1 An Evaluation Team composed of **ITS** and MSOS personnel will review and evaluate all proposals. All information provided by the Vendors, as well as any other information available to evaluation team, will be used to evaluate the proposals. The Evaluation Team will use categories to score all proposals based on the following:

13.1.1 Each category included in the scoring mechanism is assigned a weight between one and 100.

13.1.2 The sum of all categories, other than Value-Add, equals 100 possible points.

13.1.3 Value-Add is defined as product(s) or service(s), exclusive of the stated functional and technical requirements and provided to the State at no additional charge, which, in the sole judgment of the State, provide both benefit and value to the State significant enough to distinguish the proposal and merit the award of additional points. A Value-Add rating between 0 and 5 may be assigned based on the assessment of the evaluation team. These points will be added to the total score.

13.1.4 For the evaluation of this RFP, the evaluation team will use the following categories and possible points:

<b>Category</b>	<b>Possible Points</b>
Non-Cost Categories:	
Vendor Qualifications	15
Functionality	30
General Requirements	5
Demonstration	5
Services (Training & Support)	10
Total Non-Cost Points	65
Cost	30
Change Order	5
Total Base Points	100
Value Add	5
Maximum Possible Points	105

13.2 The evaluation will be conducted in four stages as follows:

13.2.1 Stage 1 – Selection of Responsive/Valid Proposals – Each proposal will be reviewed to determine if it is sufficiently responsive to the RFP requirements to permit a complete evaluation. A responsive proposal must comply with the instructions stated in this RFP with regard to content, organization/format, Vendor experience, and timely delivery. No evaluation points will be awarded in this stage. Failure to submit a complete proposal may result in rejection of the proposal.

13.2.2 Stage 2 – Non-cost Evaluation (all requirements excluding cost)

13.2.2.1 Non-cost categories and possible point values are as follows:

<b>Non-Cost Categories</b>	<b>Possible Points</b>
Vendor Qualifications	15 Points
Functionality	30 Points
General Requirements	5 Points
Demonstration	5 Points
Services (Training & Support)	10 Points
<b>Maximum Possible Points</b>	<b>65 Points</b>

13.2.2.2 The State, at its sole discretion, may request clarifications from responsive Vendors deemed to be in the competitive range. However, Vendors are cautioned that the evaluators are not required to request clarification. Therefore, all proposals must be complete and concise and reflect the most favorable terms available from the Vendors. Vendors should note that the State will not seek clarification from Vendors whose proposals were deemed nonresponsive in Stage.

13.2.2.3 Proposals meeting fewer than 80% of the requirements in the non-cost categories may be eliminated from further consideration.

13.2.2.4 Proposals providing added value, as defined in Item 13.1.3 above, may be assigned from 1 to 5 added-value points in proportion to the value of the offering to the State, at the sole discretion of the Evaluation Team.

13.2.3 Stage 3 – Cost/Change Order Rate Evaluation



- 13.2.3.1 The cost score is computed as a ratio of the difference between a given proposal's lifecycle cost and the lifecycle cost of the lowest valid proposal. The following cost scoring formula is used for every proposal evaluation.

$$(1 - ((B - A) / A)) * n$$

Where:

A = Total lifecycle cost of lowest valid proposal  
B = Total lifecycle cost of proposal being scored  
n = Maximum number of points allocated to cost for this acquisition

In simpler terms, lowest price gets a perfect score. A proposal that is 20% more expensive than the lowest priced offering gets 20% fewer points.

- 13.2.3.2 When the above formula would result in a negative cost score (i.e. the lifecycle cost of the proposal being scored is more than twice that of the lowest valid proposal), the cost score is set to zero, rather than deducting points from the Vendor's score.

- 13.2.3.3 Cost categories and maximum point values are as follows:

<b>Cost Category</b>	<b>Possible Points</b>
Lifecycle Cost	30 Points
Change Order	5 Points
<b>Maximum Possible Points</b>	<b>35 Points</b>

#### 13.2.4 Stage 4 – Selection of the successful Vendor

- 13.2.4.1 Optional Oral Presentation and demonstration - At the State's option, Vendors remaining in a competitive posture near the end of the evaluation may be requested to make an oral presentation. This presentation must be in person in Jackson, Mississippi at the Vendor's expense and conducted within seven (7) calendar days of notification. Estimated presentation dates are included in Item 4, Procurement Project schedule, in Section VII. The presentation must be made by the Vendor's proposed project principal. The presentation is intended to give the State an opportunity to become

acquainted with the Vendor's project principal, receive a first-hand understanding of the proposal and engage in a question and answer session.

- 13.2.4.2 Final Quantitative Evaluation - Following any requested presentations, the Evaluation Team will re-evaluate any technical/functional scores as necessary. The technical/functional and cost scores will then be combined to determine the Vendor's final score.

## SECTION VIII COST INFORMATION SUBMISSION

Vendors must propose a summary of all applicable project costs in the matrix that follows. The matrix must be supplemented by a cost itemization fully detailing the basis of each cost category. The level of detail must address the following elements as applicable: item, description, quantity, retail, discount, extension, and deliverable. Any cost not listed in this section may result in the Vendor providing those products or services at no charge to the State or face disqualification. Vendor may add additional rows, if needed.

INITIAL COST		
DESCRIPTION	UNIT COST	EXTENDED COST
List name of application _____		
License Total # of Licenses _____		
Training for MSOS Staff ( if other training options available use the “Other Training Options” table below		
DELIVERABLES		
DESCRIPTION	UNIT COST	EXTENDED COST
<b>TOTAL INTITAL COST</b>		

<b>ONGOING COSTS</b>		
<b>DESCRIPTION</b>	<b>UNIT COST</b>	<b>EXTENDED COST</b>
Yearly Support/Maintenance		
Year 1		
Year 2		
Year 3		
<b>TOTAL ONGOING COSTS</b>		
<b>Performance Bond(contract's amount)</b>		

<b>OTHER TRAINING OPTIONS</b>		
<b>DESCRIPTION (include # of persons)</b>	<b>UNIT COST</b>	<b>EXTENDED COST</b>

<b>Other Items Associated with Proposed Application</b>		
<b>DESCRIPTION</b>	<b>UNIT COST</b>	<b>EXTENDED COST</b>

<b>CHANGE ORDER RATE</b>	
<b>Description/Role</b>	<b>Hourly Rate</b>

## **SECTION IX REFERENCES**

Please return the following Reference Forms, and if applicable, Subcontractor Reference Forms.

1. Prime Contractor

- 1.1 The Vendor must provide at least three (3) references consisting of Vendor accounts that the State may contact. Required information includes customer contact name, address, telephone number, email address, and length of time the account has been a reference. Forms for providing reference information are included later in this RFP section. The Vendor must make arrangements in advance with the account references so that they may be contacted at the Project team's convenience without further clearance or Vendor intercession.
- 1.2 Any of the following may subject the Vendor's proposal to being rated unfavorably relative to these criteria or removed from further consideration, at the State's sole discretion:
- 1.3 Failure to provide reference information in the manner described
- 1.4 Inability of the State to substantiate minimum experience or other requirements from the references provided
- 1.5 Nonresponsiveness of references to the State's attempts to contact them
- 1.6 Unfavorable references that raise serious concerns about material risks to the State in contracting with the Vendor for the proposed products or services
- 1.7 References should be based on the following profiles and be able to substantiate the following information from both management and technical viewpoints:
  - 1.7.1 References must be utilizing a solution proposed by Vendor. Additional consideration maybe given for length of use.
  - 1.7.2 References must be a government entity. Additional consideration may be given for government of similar participant based as Mississippi.
  - 1.7.3 References must have utilized dedicated account management services.
  - 1.7.4 References must have used ES&S' Ivontronic, Automark, TSX and M100.

- 1.7.5 References must be a user of the Help Desk feature. Additional consideration maybe given for length of use.
  - 1.8 The State reserves the right to request information about the Vendor from any previous customer of the Vendor of whom the State is aware, including the procuring agency and/or other agencies or institutions of the State, even if that customer is not included in the Vendor's list of references and to utilize such information in the evaluation of the Vendor's proposal.
  - 1.9 Unless otherwise indicated in the Scoring Methodology in Section VII, reference information available to the State will be used as follows:
    - 1.9.1 As documentation supporting mandatory experience requirements for companies, products, and/or individuals, as required in this RFP;
    - 1.9.2 To confirm the capabilities and quality of a Vendor, product, or individual for the proposal deemed lowest and best, prior to finalizing the award.
  - 1.10 The State reserves the right to forego reference checking when, at the State's sole discretion, the evaluation team determines that the capabilities of the recommended vendor are known to the State.
2. Subcontractors

The Vendor's proposal must identify any subcontractor that will be used and include the name of the company, telephone number, contact person, type of work subcontractor will perform, number of certified employees to perform said work, and three (3) references for whom the subcontractor has performed work that the State may contact. Forms for providing subcontractor information and references are included at the end of this section.

Unless otherwise noted, the requirements found in the References section may be met through a combination of Vendor and subcontractor references and experience. However, the subcontract must remain assigned to throughout the project's duration. Vendor's proposal should clearly indicate any mandatory experience requirements met by subcontractors. NOTE: The State reserves the right to eliminate from further consideration proposals in which the prime Vendor does not, in the State's sole opinion, provide substantive value or investment in the total solution proposed. (i.e. the State does not typically accept proposals in which the prime Vendor is only a brokering agent.

## **REFERENCE FORM**

### **Complete three (3) Reference Forms.**

Contact Name:

Company Name:

Address:

Phone #:

E-Mail:

Project Start Date:

Project End Date:

Description of product/services/project, including start and end dates:

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## **SUBCONTRACTOR REFERENCE FORM**

**Complete a separate form for each subcontractor proposed.**

Contact Name:  
Company name:  
Address:  
Phone #:  
E-Mail:

Scope of services/products to be provided by subcontractor:

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**Complete three (3) Reference Forms for each Subcontractor.**

Contact Name:  
Company name:  
Address:  
Phone #:  
E-Mail:  
Description of product/services/project, including start and end dates:

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## **EXHIBIT A STANDARD CONTRACT**

A properly executed contract is a requirement of this RFP. After an award has been made, it will be necessary for the winning Vendor to execute a contract with **ITS**. The inclusion of this contract does not preclude **ITS** from, at its sole discretion, negotiating additional terms and conditions with the selected Vendor(s) specific to the projects covered by this RFP.

If Vendor cannot comply with any term or condition of this Standard Contract, Vendor must list and explain each specific exception on the *Proposal Exception Summary Form* included in Section V.

### **PROJECT NUMBER 38837 SOFTWARE LICENSE AND MAINTENANCE AGREEMENT BETWEEN INSERT VENDOR NAME AND MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES AS CONTRACTING AGENT FOR THE MISSISSIPPI SECRETARY OF STATE'S OFFICE**

This Software License and Maintenance Agreement (hereinafter referred to as "Agreement") is entered into by and between **INSERT VENDOR NAME**, a **INSERT STATE OF INCORPORATION** corporation having its principal place of business at **INSERT VENDOR ADDRESS** (hereinafter referred to as "Licensor"), and Mississippi Department of Information Technology Services having its principal place of business at 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201 (hereinafter referred to as "ITS"), as contracting agent for the Mississippi Secretary of State's Office located at 401 Mississippi Street, Jackson, Mississippi 39201 (hereinafter referred to as "Licensee"). ITS and Licensee are sometimes collectively referred to herein as "State."

**WHEREAS**, Licensee, pursuant to Request for Proposals (hereinafter referred to as "RFP") Number 3643, requested proposals for the acquisition of software, services, and technical support necessary for the implementation of a web-based on-line elections training system as described in the RFP; and

**WHEREAS**, Licensor was the successful proposer in an open, fair, and competitive procurement process to provide the software and services described herein;

**NOW THEREFORE**, in consideration of the mutual understandings, promises, consideration, and agreements set forth, the parties hereto agree as follows:

#### **ARTICLE 1 DEFINITIONS**

The following terms as used herein shall have the following meanings:

**1.1 “Documentation”** means the published user and technical manuals and documentation that Licensor makes generally available for the Software.

**1.2 “Enhancements”** means the fixes, updates, upgrades, or new versions of the Software or Documentation that Licensor may provide to Licensee under this Agreement.

**1.3 “Licensee”** means the Mississippi Secretary of State's Office, its employees, and any third party consultants or Outsourcers engaged by Licensee who have a need to know and who shall be bound by the terms and conditions of this Agreement.

**1.4 “Licensor”** means **INSERT VENDOR NAME** and its successors and assigns.

**1.5 “Products”** means the Software, Documentation, Enhancements, and any copy of the Software, Documentation, or Enhancements.

**1.6 “Software”** means the machine-readable object code version of the computer programs described in and specifically identified in the attached Exhibit A, whether embedded on disc, tape, or other media.

## **ARTICLE 2 TERM OF AGREEMENT**

**2.1** The effective date of this Agreement shall be the date it is signed by all parties and, provided that Licensee has paid all applicable fees, its term is perpetual, unless terminated as prescribed elsewhere in this Agreement. The Products must be delivered, installed, accepted by Licensee, and all training and other tasks required under this Agreement, with the exception of warranty service or software maintenance, completed within one hundred and twenty (120) days of Licensor's receipt of Licensee's purchase order, unless a change in this date is mutually agreed to in writing by the Licensee and the Licensor. Software, as used herein, also includes future updates/revisions and new releases of the Software that Licensor may provide to Licensee under this Agreement.

**2.2** This Agreement will become a binding obligation on the State only upon the issuance of a valid purchase order by the Licensee, following contract execution and the issuance by ITS of the CP-1 Acquisition Approval Document.

## **ARTICLE 3 SCOPE OF LICENSE**

Licensor hereby grants to Licensee a non-exclusive, non-transferable, and perpetual license to use the Products for Licensee's business operations subject to the terms of this Agreement. Licensee may license additional Software Products by executing a written amendment to this Agreement and paying an additional license fee.

## **ARTICLE 4 DELIVERY, RISK OF LOSS, AND ACCEPTANCE**

**4.1** Licensor shall deliver and install the Software and Documentation to the location specified by Licensee and pursuant to the delivery schedule mutually agreed to by the parties.

**4.2** Licensors shall assume and bear the entire risk of loss and damage to the Products from any cause whatsoever while in transit and at all times throughout Licensors' possession thereof.

**4.3** Licensee shall have thirty (30) calendar days after installation of the Software by Licensors to evaluate and test the Software to confirm that it performs without any defects and in accordance with RFP No. 3643, Licensors' Proposal in response thereto, and Licensors' user Documentation. Licensee shall immediately thereafter notify Licensors in writing of any defects in the Software, which must be corrected prior to payment being made. Thereafter, Licensors shall have ten (10) working days in which to either repair or replace the defective Software, all at Licensors' expense. In the event Licensors is unable to repair or replace the Software, Licensee may terminate this Agreement pursuant to the Termination Article herein.

## **ARTICLE 5 CONSIDERATION AND METHOD OF PAYMENT**

**5.1** Except as provided in the Change Order Rate and Procedure Article of this Agreement, the total compensation to be paid to the Licensors by the Licensee shall not exceed the fixed price of **\$INSERT AMOUNT** for all software, products, services, and performances under this Agreement, payable as described in Exhibit A, unless prior written authorization from ITS has been obtained. Authorization of payments is subject to the written approval of the Licensee.

**5.2** The Licensors and the Licensee agree to the Deliverable Schedule as set forth in the attached Exhibit A to this Agreement. The Licensors will receive payment in the amount indicated in Article 5.1 herein, less retainage to be withheld in accordance with the Retainage Article herein, upon written acceptance by the Licensee of each of the deliverables defined therein. The parties agree that as the project work plan is revised by written agreement of the parties during the term of this Agreement, the anticipated dates for acceptance of deliverables and for the corresponding payments to the Licensors, but not the amounts of those payments, may likewise be revised only by written agreement of the parties.

**5.3** Upon written acceptance, as set forth in Article 4 herein, by the Licensee of a deliverable which has an associated payment, the Licensors will invoice the Licensee for the invoice amount of that payment as indicated in the attached Exhibit A, less retainage to be withheld in accordance with the Retainage Article herein. Services will be invoiced as they are rendered. Licensors shall submit invoices and supporting documentation to Licensee electronically at any time during the term of this Agreement using the processes and procedures identified by the State. Licensee shall make payment hereunder in accordance with Mississippi law on "Timely Payment for Purchases by Public Bodies," Section 31-7-301, et seq. of the 1972 Mississippi Code Annotated, as amended, which generally provides for payment of undisputed amounts by Licensee within forty-five (45) days of receipt of the invoice. Licensors understands and agrees that Licensee is exempt from the payment of taxes. All payments should be made in United States currency. Payments by state agencies using the Statewide Automated Accounting System ("SAAS") shall be made and remittance information provided electronically as directed by the State. These payments by SAAS agencies shall be deposited into the bank account of the Licensors' choice. No payment, including final payment, shall be construed as acceptance of defective Products or incomplete work, and the Licensors shall remain responsible for full

performance in strict compliance with the contract documents specified in the article herein titled "Entire Agreement."

## **ARTICLE 6 OWNERSHIP, USE, AND RESTRICTIONS ON USE**

**6.1** Licensee acknowledges that the Software Products shall remain the exclusive property of Licensor. Licensee acknowledges that it has no right to or interest in the Software Products other than as expressly granted herein. Licensee shall not remove any identification notices affixed to the Software Products or their packaging.

**6.2** Licensee is granted the right to make sufficient copies of the Products to support its use and for archival and disaster recovery purposes. Licensee shall include Licensor's confidentiality and proprietary rights notices on any copies made of the Products.

**6.3** Licensee acknowledges that the Software Products are trade secrets and confidential information of Licensor. Neither the Software Products nor any physical media containing the Software may be used, copied, disclosed, broadcast, sold, re-licensed, distributed, or otherwise published by Licensee except as expressly permitted by this Agreement. Licensee shall use reasonable efforts to maintain the confidential nature of the Software Products.

**6.4** Licensee is granted the right to customize the Software for its use. Licensee may not resell or sub-license the original Software or the customized version.

**6.5** Licensee agrees that, except as noted herein, it will not otherwise copy, translate, modify, adapt, decompile, disassemble, or reverse engineer any of the Software without the prior written consent of Licensor.

## **ARTICLE 7 WARRANTIES**

**7.1** Licensor represents and warrants that it has the right to license the Products provided under this Agreement.

**7.2** Licensor represents and warrants that the Products provided by Licensor shall meet or exceed the minimum specifications set forth in RFP No. 3643 and Licensor's Proposal in response thereto.

**7.3** Licensor represents and warrants that all work performed hereunder, including but not limited to consulting, training, and Software maintenance, shall be performed by competent personnel and shall be of professional quality consistent with generally accepted industry standards for the performance of such services and shall comply in all respects with the requirements of this Agreement. For any breach of this warranty, the Licensor shall, for a period of ninety (90) days from the performance of service, perform the services again at no cost to the Licensee, or if the Licensor is unable to perform the services as warranted, the Licensor shall reimburse the Licensee the fees paid to the Licensor for the unsatisfactory services.

**7.4** Licensor represents and warrants that neither the Software nor Enhancements shall contain disabling code or a lockup program or device. Licensor further agrees that it will not

under any circumstances, including enforcement of a valid contract right, (a) install or trigger a lockup program or device, or (b) take any step which would in any manner interfere with Licensee's licensed use of the Software or Enhancements and/or which would restrict Licensee from accessing its data files or in any way interfere with the transactions of Licensee's business. For any breach of this warranty, Licensor, at its expense, shall, within five (5) working days after receipt of notification of the breach, deliver Products to Licensee that are free of such disabling code or a lockup program or device.

**7.5** In addition, Licensor represents and warrants that neither the Software nor Enhancements delivered to Licensee contain a computer virus. For purposes of this provision, a computer virus shall be defined as code intentionally inserted in the Software or Enhancements that will damage or destroy Licensee's applications or data. For any breach of this warranty, Licensor, at its expense, shall, within five (5) working days after receipt of notification of the breach, deliver Products to Licensee that are free of any virus and shall be responsible for repairing, at Licensor's expense, any and all damage done by the virus to Licensee's site.

**7.6** Licensor represents and warrants that the Software will operate free from defects for a period of one (1) year after acceptance and will provide Licensee complete functionality necessary for the operation of the system as stated in RFP No. 3643 and the Licensor's Proposal in response thereto. Licensor's obligations pursuant to this warranty shall include, but are not limited to, the repair of all defects or the replacement of the Software at the expense of Licensor. In the event Licensor is unable to repair or replace the Software within ten (10) working days after receipt of notice of the defect, Licensee shall be entitled to a full refund of fees paid and shall have the right to terminate this Agreement in whole or in part. Licensee's rights hereunder are in addition to any other rights Licensee may have.

**7.7** Licensor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act, Section 71-11-1, et seq. of the Mississippi Code Annotated (Supp2008), and will register and participate in the status verification system for all newly hired employees. The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Licensor agrees to maintain records of such compliance and, upon request of the State and approval of the Social Security Administration or Department of Homeland Security where required, to provide a copy of each such verification to the State. Licensor further represents and warrants that any person assigned to perform services hereunder meets the employment eligibility requirements of all immigration laws of the State of Mississippi. Licensor understands and agrees that any breach of these warranties may subject Licensor to the following: (a) termination of this Agreement and ineligibility for any state or public contract in Mississippi for up to three (3) years, with notice of such cancellation/termination being made public, or (b) the loss of any license, permit, certification or other document granted to Licensor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year, or (c) both. In the event of such termination/cancellation, Licensor would also be liable for any additional costs incurred by

the State due to contract cancellation or loss of license or permit.

**7.8** Licensors represents and warrants that the system provided pursuant to this Agreement will pass both internal security audits and independent security audits. For any breach of the preceding warranty at any time during which the system is covered by warranty, maintenance and/or support, Licensors shall, at its own expense and at no cost to Licensee, remediate any defect, anomaly or security vulnerability in the system by repairing and/or replacing any and all components of the system necessary in order for the system to be secure.

**7.9** Licensors represents and warrants that no official or employee of Licensee or of ITS, and no other public official of the State of Mississippi who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of the project shall, prior to the completion of said project, voluntarily acquire any personal interest, direct or indirect, in this Agreement. The Licensors warrants that it has removed any material conflict of interest prior to the signing of this Agreement, and that it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its responsibilities under this Agreement. The Licensors also warrants that in the performance of this Agreement no person having any such known interests shall be employed.

**7.10** The Licensors represents and warrants that no elected or appointed officer or other employee of the State of Mississippi, nor any member of or delegate to Congress has or shall benefit financially or materially from this Agreement. No individual employed by the State of Mississippi shall be admitted to any share or part of the Agreement or to any benefit that may arise therefrom. The State of Mississippi may, by written notice to the Licensors, terminate the right of the Licensors to proceed under this Agreement if it is found, after notice and hearing by the ITS Executive Director or his/her designee, that gratuities in the form of entertainment, gifts, jobs, or otherwise were offered or given by the Licensors to any officer or employee of the State of Mississippi with a view toward securing this Agreement or securing favorable treatment with respect to the award, or amending or making of any determinations with respect to the performing of such contract, provided that the existence of the facts upon which the ITS Executive Director makes such findings shall be in issue and may be reviewed in any competent court. In the event this Agreement is terminated under this article, the State of Mississippi shall be entitled to pursue the same remedies against the Licensors as it would pursue in the event of a breach of contract by the Licensors, including punitive damages, in addition to any other damages to which it may be entitled at law or in equity.

## **ARTICLE 8 INFRINGEMENT INDEMNIFICATION**

Licensors represents and warrants that neither the Products and their elements nor the use thereof violates or infringes on any copyright, patent, trademark, servicemark, trade secret, or other proprietary right of any person or entity. Licensee shall notify Licensors promptly of any infringement claim of which it has knowledge and shall cooperate with Licensors in the defense of such claim by supplying information, all at Licensors's expense. Licensors, at its own expense, shall defend or settle any and all infringement actions filed against Licensors or Licensee which involve the Products provided under this Agreement and shall pay all settlements, as well as all costs, attorney fees, settlements, damages, and judgment finally awarded against Licensee. If the

continued use of the Products for the purpose intended is threatened to be enjoined or is enjoined by any court of competent jurisdiction, Licensor shall, at its expense: (a) first procure for Licensee the right to continue using the Products, or upon failing to procure such right; (b) modify or replace the Products, or components thereof, with non-infringing Products so it becomes non-infringing, or upon failing to secure either such right; (c) refund the license fees previously paid by Licensee for the Products Licensee may no longer use. Said refund shall be paid within ten (10) working days of notice to Licensee to discontinue said use.

## **ARTICLE 9 MODIFICATION**

This Agreement may be modified only by written agreement signed by the parties hereto, and any attempt at oral modification shall be void and of no effect. The parties agree to renegotiate the Agreement if federal and/or state revisions of any applicable laws or regulations make changes in this Agreement necessary.

## **ARTICLE 10 AUTHORITY, ASSIGNMENT AND SUBCONTRACTS**

**10.1** In matters of proposals, negotiations, contracts, and resolution of issues and/or disputes, the parties agree that Licensor represents all contractors, third parties, and/or subcontractors Licensor has assembled for this project. The Licensee is required to negotiate only with Licensor, as Licensor's commitments are binding on all proposed contractors, third parties, and subcontractors.

**10.2** Neither party may assign or otherwise transfer this Agreement or its obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any attempted assignment or transfer of its obligations without such consent shall be null and void. This Agreement shall be binding upon the parties' respective successors and assigns.

**10.3** Licensor must obtain the written approval of Licensee before subcontracting any portion of this Agreement. No such approval by Licensee of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of Licensee in addition to the total fixed price agreed upon in this Agreement. All subcontracts shall incorporate the terms of this Agreement and shall be subject to the terms and conditions of this Agreement and to any conditions of approval that Licensee may deem necessary.

**10.4** Licensor represents and warrants that any subcontract agreement Licensor enters into shall contain a provision advising the subcontractor that the subcontractor shall have no lien and no legal right to assert control over any funds held by the Licensee, that the subcontractor acknowledges that no privity of contract exists between the Licensee and the subcontractor, and that the Licensor is solely liable for any and all payments which may be due to the subcontractor pursuant to its subcontract agreement with the Licensor. The Licensor shall indemnify and hold harmless the State from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs, and expenses of every kind and nature whatsoever arising as a result of Licensor's failure to pay any and all amounts due by Licensor to any subcontractor, materialman, laborer, or the like.

**10.5** All subcontractors shall be bound by any negotiation, arbitration, appeal, adjudication, or settlement of any dispute between the Licensor and the Licensee, where such dispute affects the subcontract.

#### **ARTICLE 11 AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of the Licensee to proceed under this Agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of this Agreement are, at any time, not forthcoming or insufficient through the failure of the federal government to provide funds, the State of Mississippi to appropriate funds, the discontinuance or material alteration of the program under which funds were provided, or if funds are not otherwise available to the Licensee, the Licensee shall have the right to immediately terminate this Agreement without damage, penalty, cost, or expense to the Licensee of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination. In the event of termination, Licensor shall be entitled to receive just and equitable compensation for satisfactory work completed or services rendered by Licensor in connection with this Agreement as of the date of receipt of notification of termination.

#### **ARTICLE 12 TERMINATION**

Notwithstanding any other provision of this Agreement to the contrary, this Agreement may be terminated in whole or in part as follows: (a) upon the mutual, written agreement of the parties; (b) by Licensee upon thirty (30) days written notice to Licensor without the assessment of any penalties if Licensor becomes the subject of bankruptcy, reorganization, liquidation, or receivership proceedings, whether voluntary or involuntary; (c) by Licensee upon thirty (30) days written notice to Licensor without the assessment of any penalties in the event Licensee determines it is in the best interest of the State of Mississippi to terminate this Agreement; or (d) by either party in the event of a breach of a material term or provision of this Agreement where such breach continues for thirty (30) days after the breaching party receives written notice from the other party. Upon termination, Licensee will be entitled to a refund of applicable unexpended prorated annual Software maintenance fees/charges, if any. In the event of termination, Licensor shall be entitled to receive just and equitable compensation for satisfactory work completed or services rendered by Licensor in connection with this Agreement as of the date of receipt of notification of termination. In no case shall said compensation exceed the total contract price. The provisions of this article do not limit either party's right to pursue any other remedy available at law or in equity.

#### **ARTICLE 13 GOVERNING LAW**

This Agreement shall be construed and governed in accordance with the laws of the State of Mississippi, and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi. Licensor expressly agrees that under no circumstances shall Licensee be obligated to pay an attorney's fee, prejudgment interest, or the cost of legal action to Licensor. Further, nothing in this Agreement shall affect any statutory rights Licensee may have that cannot be waived or limited by contract.

#### **ARTICLE 14 WAIVER**



Failure of either party hereto to insist upon strict compliance with any of the terms, covenants, and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this Agreement. A waiver by the State, to be effective, must be in writing, must set out the specifics of what is being waived, and must be signed by an authorized representative of the State.

#### **ARTICLE 15 SEVERABILITY**

If any term or provision of this Agreement is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of this Agreement shall be valid and enforceable to the fullest extent permitted by law, provided that the State's purpose for entering into this Agreement can be fully achieved by the remaining portions of the Agreement that have not been severed.

#### **ARTICLE 16 CAPTIONS**

The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provision or section of this Agreement.

#### **ARTICLE 17 HOLD HARMLESS**

To the fullest extent allowed by law, Licensor shall indemnify, defend, save and hold harmless, protect, and exonerate Licensee, its Board Members, officers, employees, agents, and representatives from and against any and all claims, demands, liabilities, suits, actions, damages, losses, costs, and expenses of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, attorney fees, and claims for damages arising out of or caused by Licensor and/or its partners, principals, agents, employees, or subcontractors in the performance of or failure to perform this Agreement.

#### **ARTICLE 18 THIRD PARTY ACTION NOTIFICATION**

Licensor shall notify Licensee in writing within five (5) business days of Licensor filing bankruptcy, reorganization, liquidation or receivership proceedings or within five (5) business days of its receipt of notification of any action or suit being filed or any claim being made against Licensor or Licensee by any entity that may result in litigation related in any way to this Agreement and/or which may affect the Licensor's performance under this Agreement. Failure of the Licensor to provide such written notice to Licensee shall be considered a material breach of this Agreement and the Licensee may, at its sole discretion, pursue its rights as set forth in the Termination Article herein and any other rights and remedies it may have at law or in equity.

#### **ARTICLE 19 AUTHORITY TO CONTRACT**

Licensor warrants that it is a validly organized business with valid authority to enter into this Agreement, that entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind, and notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

## **ARTICLE 20 NOTICE**

Any notice required or permitted to be given under this Agreement shall be in writing and personally delivered or sent by electronic means, provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the party to whom the notice should be given at their business address listed herein. ITS' address for notice is: Mr. David L. Litchliter, Executive Director, Mississippi Department of Information Technology Services, 301 North Lamar Street, Suite 508, Jackson, Mississippi 39201. Licensee's address for notice is: Ms. Karana Carroll, Deputy Chief of Staff, Mississippi Secretary of State's Office, 401 Mississippi Street, Jackson, Mississippi 39201. The Licensors' address for notice is: **INSERT VENDOR NAME**. Notice shall be deemed given when actually received or when refused. The parties agree to promptly notify each other in writing of any change of address.

## **ARTICLE 21 RECORD RETENTION AND ACCESS TO RECORDS**

Licensors shall establish and maintain financial records, supporting documents, statistical records and such other records as may be necessary to reflect its performance of the provisions of this Agreement. The Licensee, ITS, any state or federal agency authorized to audit Licensee, and/or any of their duly authorized representatives, shall have unimpeded, prompt access to this Agreement and to any of the Licensors' proposals, books, documents, papers and/or records that are pertinent to this Agreement to make audits, copies, examinations, excerpts and transcriptions at the State's or Licensors' office as applicable where such records are kept during normal business hours. All records relating to this Agreement shall be retained by the Licensors for three (3) years from the date of receipt of final payment under this Agreement. However, if any litigation or other legal action, by or for the state or federal government has begun that is not completed at the end of the three (3) year period, or if an audit finding, litigation or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until resolution.

## **ARTICLE 22 INSURANCE**

Licensors represents that it will maintain workers' compensation insurance as prescribed by law, which shall inure to the benefit of Licensors' personnel, as well as comprehensive general liability and employee fidelity bond insurance. Licensors will, upon request, furnish Licensee with a certificate of conformity providing the aforesaid coverage.

## **ARTICLE 23 DISPUTES**

Any dispute concerning a question of fact under this Agreement, which is not disposed of by agreement of the Licensors and Licensee, shall be decided by the Executive Director of Mississippi Department of Information Technology Services or his/her designee. Licensors agrees to continue to provide such service, maintenance, and updates as Licensee may contract for and pay for pending the resolution of any dispute hereunder. The decision of the Executive Director shall be reduced to writing and a copy thereof mailed or furnished to the parties. Disagreement with such decision by either party shall not constitute a breach under the terms of this Agreement. Nothing in this Article shall abridge the right of either party to seek such other rights and remedies it may have at law or in equity.

#### **ARTICLE 24 COMPLIANCE WITH LAWS**

Licensor shall comply with, and all activities under this Agreement shall be subject to, all Licensee policies and procedures and all applicable federal, state, and local laws, regulations, policies, and procedures as now existing and as may be amended or modified. Specifically, but not limited to, Licensor shall not discriminate against any employee nor shall any party be subject to discrimination in the performance of this Agreement because of race, creed, color, sex, age, national origin, or disability.

#### **ARTICLE 25 CONFLICT OF INTEREST**

Licensor shall notify Licensee of any potential conflict of interest resulting from the representation of or service to other clients. If such conflict cannot be resolved to Licensee's satisfaction, Licensee reserves the right to terminate this Agreement.

#### **ARTICLE 26 SOVEREIGN IMMUNITY**

By entering into this Agreement with Licensor, the Licensee in no way waives its sovereign immunities or defenses as provided by law.

#### **ARTICLE 27 CONFIDENTIAL INFORMATION**

**27.1** Both parties shall treat the other party's data and information to which it has access by Licensor's performance under this Agreement as confidential and shall not disclose such data or information to a third party without specific written consent. In the event that either party receives notice that a third party requests divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of such information, the said party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by state or federal law. This section shall survive the termination or completion of this Agreement.

**27.2** Licensor and Licensee shall not be obligated to treat as confidential and proprietary any information disclosed by the other party ("the Disclosing Party") which: (a) is or becomes known to the public without fault or breach of the party receiving confidential information of the Disclosing Party ("the Recipient"); (b) is furnished by the Disclosing Party to third parties without restriction on subsequent disclosure; (c) the Recipient obtains from a third party without restriction on disclosure and without breach of a non-disclosure obligation; (d) is already in the Recipient's possession without an obligation of confidentiality; or (e) is independently developed by Recipient without reliance on the confidential information.

**27.3** With the exception of any attached exhibits which are labeled as "confidential", the parties understand and agree that this Agreement, including any amendments and/or change orders thereto, does not constitute confidential information, and may be reproduced and distributed by the State without notification to Licensor. ITS will provide third party notice to Licensor of any requests received by ITS for any such confidential exhibits so as to allow Licensor the opportunity to protect the information by court order as outlined in ITS Public Records Procedures.

## **ARTICLE 28 EFFECT OF SIGNATURE**

Each person signing this Agreement represents that he or she has read the Agreement in its entirety, understands its terms, is duly authorized to execute this Agreement on behalf of the parties, and agrees to be bound by the terms contained herein. Accordingly, this Agreement shall not be construed or interpreted in favor of or against the Licensee or the Licensor on the basis of draftsmanship or preparation hereof.

## **ARTICLE 29 ENTIRE AGREEMENT**

**29.1** This Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes and replaces any and all prior negotiations, understandings, and agreements, written or oral, between the parties relating hereto, including any “shrink-wrap” version of the Software Product or any “click-wrap” or “browse-wrap” license presented in connection with a license via the Internet. The RFP No. 3643 and Licensor’s Proposal in response thereto are hereby incorporated into and made a part of this Agreement.

**29.2** The Agreement made by and between the parties hereto shall consist of and precedence is hereby established by the order of the following:

- A.** This Agreement signed by both parties;
- B.** Any exhibits attached to this Agreement;
- C.** RFP No. 3643; and
- D.** Licensor’s Proposal, as accepted by Licensee, in response to RFP No. 3643.

**29.3** The intent of the above listed documents is to include all items necessary for the proper execution and completion of the services by the Licensor. The documents are complementary, and what is required by one shall be binding as if required by all. A higher order document shall supersede a lower order document to the extent necessary to resolve any conflict or inconsistency arising under the various provisions thereof, provided, however, that in the event an issue is addressed in one of the above mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur by reason thereof. The documents listed above are shown in descending order of priority; that is, the highest document begins with the first listed document (“A. This Agreement”) and the lowest document is listed last (“D. Licensor’s Proposal”).

## **ARTICLE 30 SURVIVAL**

Articles 7, 8, 13, 17, 21, 26, 27, and all other articles, which by their express terms so survive or which should so reasonably survive, shall survive any termination or expiration of this Agreement.

## **ARTICLE 31 DEBARMENT AND SUSPENSION CERTIFICATION**

Licensor certifies that neither it nor its principals: (a) are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency; (b) have, within a three (3) year period preceding this Agreement, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a

public (federal, state, or local) transaction or contract under a public transaction, including violation of federal or state anti-trust statutes, commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, and receiving stolen property; (c) are presently indicted of or otherwise criminally or civilly charged by a governmental entity with the commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction, including violation of federal or state anti-trust statutes, commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property; and (d) have, within a three (3) year period preceding this Agreement, had one or more public (federal, state, or local) transactions terminated for cause or default.

### **ARTICLE 32 NETWORK SECURITY**

Licensor and Licensee understand and agree that the State of Mississippi's Enterprise Security Policy mandates that all remote access to and/or from the State network must be accomplished via a Virtual Private Network (VPN). If remote access is required at any time during the life of this Agreement, Licensor and Licensee agree to implement/maintain a VPN for this connectivity. This required VPN must be IPSec-capable (ESP tunnel mode) and will terminate on a Cisco VPN-capable device (e.g. VPN concentrator, PIX firewall, etc.) on the State's premises. Licensor agrees that it must, at its expense, implement/maintain a compatible hardware/software solution to terminate the specified VPN on the Licensor's premises. The parties further understand and agree that the State protocol standard and architecture are based on industry-standard security protocols and manufacturer engaged at the time of contract execution. The State reserves the right to introduce a new protocol and architecture standard and to require the Licensor to comply with the same, in the event the industry introduces a more secure, robust protocol to replace IPSec/ESP and/or there is a change in the manufacturer engaged.

### **ARTICLE 33 STATUTORY AUTHORITY**

By virtue of Section 25-53-21 of the Mississippi Code Annotated, as amended, the Executive Director of ITS is the purchasing and contracting agent for the State of Mississippi in the negotiation and execution of all contracts for the acquisition of information technology equipment, software, and services. The Licensor understands and agrees that ITS as contracting agent is not responsible or liable for the performance or non-performance of any of Licensee's contractual obligations, financial or otherwise, contained within this Agreement.

### **ARTICLE 34 TRAINING**

Licensor shall, for the fees specified in the attached Exhibit A, provide five (5) days of on-site training for Licensee staff on user guides and training documents. Licensor and Licensee shall mutually agree on the time for the training and an outline of the training to be provided. Licensor specifically understands and agrees that Licensee will not accept the Software until Licensor completes the training requirements. Licensor agrees to provide, upon delivery, all Documentation needed to fully acquaint the user with the operation of the Software.

## **ARTICLE 35 SOFTWARE MAINTENANCE**

**35.1** Prior to expiration of the warranty period, Licensor shall notify Licensee in writing of the impending warranty expiration, and Licensee shall in turn notify Licensor of its decision to either obtain Software maintenance or to forgo Software maintenance. Upon notification of intent to obtain Software maintenance, Licensor shall provide Licensee, for the annual fee specified in the attached Exhibit A, the Software maintenance services as herein described.

**35.2** Licensor shall provide the following Software maintenance services: As part of the Software maintenance services, Licensor will maintain the Products in an operable condition according to the specifications contained in the technical manuals and as outlined in RFP No. 3643 and the Licensor's Proposal in response thereto. Licensor shall make available to Licensee during each annual maintenance period at least one (1) update to the Software Products that will incorporate any new features or enhancements to the licensed Products. Licensor shall also provide direct modem support and unlimited toll-free telephone support in the operation of the Software Products seven (7) days a week during the hours of 8:00 A.M. to 10:00 P.M. (Central Standard Time), with a guaranteed one (1) hour response time. Priority placement in the support queue shall be given to all system locking situations or problems claimed by Licensee to be mission critical processes. Finally, Licensor shall provide on-site support in the operation of the Software Products if reasonably convenient or necessary in the opinion of the Licensor.

**35.3** Sixty (60) days prior to the expiration of the initial Software maintenance period or any renewal term thereof, Licensor shall notify Licensee in writing of the impending expiration, and Licensee shall have thirty (30) days in which to notify Licensor of its intentions to either renew or cancel any further Software maintenance. In no event shall the cost for Software maintenance increase by more than five percent (5%) per year.

## **ARTICLE 36 ESCROW OF SOURCE CODE**

**36.1** With the execution of this Agreement, the Licensor shall place and maintain a current copy of the data dictionary, Documentation, object code, and source code in escrow and shall furnish Licensee with a copy of the escrow agreement and the name and address of the agent. The escrow agreement shall authorize the escrow agent to release, at no cost to Licensee, the data dictionary, Documentation, object code, and source code to Licensee if and when the Licensee is deemed to have a right under this article. The Licensor shall pay all costs of providing and maintaining the escrow agreement, including the fees of the escrow agent. The copy of the source code placed in escrow shall be reproduced and maintained on magnetic tape or disk using a commonly accepted data recording protocol. Program documentation sufficient to allow a competent programmer to use and maintain the source code programs must accompany the source code. When a change is made to the object code or source code by or on behalf of the Licensor during the term of the escrow agreement, the revised code, including the change, shall be delivered to the escrow agent not later than thirty (30) calendar days after the change is effected by or on behalf of the Licensor.

**36.2** Provided that the Licensee is not then in substantial default under this Agreement, the Licensor shall provide to Licensee, at no cost and within ten (10) calendar days after receipt of Licensee's written request for it, one (1) complete copy of the data dictionary, Documentation,

object code, and source code used in the preparation of the Software and custom modifications to the source code and object code as a result of this Agreement, brought up to date as of the date of delivery of such source code to Licensee, upon the occurrence of any of the following events: (a) any or all material parts of the source code or object code is generally made available, with or without additional cost, to other users of comparable Software; or (b) the Licensor's or the software manufacturer's cessation, for any reason, to do business; or (c) the Licensor or the software manufacturer discontinues maintenance of the Software; or (d) bankruptcy, receivership, insolvency, reorganization, dissolution, liquidation, or other similar proceedings are instituted by or against the Licensor or the software manufacturer.

#### **ARTICLE 37 LIQUIDATED DAMAGES**

It is agreed by the parties hereto that time is of the essence and that in the event of a delay in the delivery, installation, and satisfactory completion and acceptance of the services provided for herein, damage shall be sustained by Licensee. In the event of a delay as described herein, Licensor shall pay Licensee, within five (5) calendar days from the date of receipt of notice, fixed and liquidated damages of \$82.00 per day times the number of registrants for the affected period for each calendar day of delay caused by Licensor. Licensee may offset amounts due it as liquidated damages against any monies due Licensor under this Agreement. Licensee will notify Licensor in writing of any claim for liquidated damages pursuant hereto on or before the date Licensee deducts such sums from money payable to Licensor. Any liquidated damages assessed are in addition to and not in limitation of any other rights or remedies of Licensee.

#### **ARTICLE 38 PERFORMANCE BOND**

As a condition precedent to the formation of this Agreement, the Licensor must provide a performance bond as herein described. To secure the Licensor's performance, the Licensor shall procure, submit to the State with this executed Agreement, and maintain in effect at all times during the course of this Agreement a performance bond in the total amount of this Agreement. The bond shall be accompanied by a duly authenticated or certified document evidencing that the person executing the bond is a licensed Mississippi agent for the bonding company. This certified document shall identify the name and address of the person or entity holding the performance bond and shall identify a contact person to be notified in the event the State is required to take action against the bond. The term of the performance bond shall be concurrent with the term of this Agreement, with the exception of post-warranty maintenance and support, and shall not be released to Licensor until final acceptance of all products and deliverables required herein or until the warranty period, if any, has expired, whichever occurs last. If applicable, and at the State's sole discretion, the State may, at any time during the warranty period, review Licensor's performance and performance of the products/services delivered and determine that the Licensor's performance bond may be reduced or released prior to expiration of the full warranty period. The performance bond shall be procured at Licensor's expense and be payable to the Licensee. The cost of the bond may be invoiced to the Licensee after project initiation only if itemized in the Licensor's cost proposal and in the attached Exhibit A. Prior to approval of the performance bond, the State reserves the right to review the bond and require Licensor to substitute an acceptable bond in such form as the State may reasonably require. The premiums on such bond shall be paid by Licensor. The bond must specifically refer to this Agreement and shall bind the surety to all of the terms and conditions of this Agreement. If the

Agreement is terminated due to Licensor's failure to comply with the terms thereof, Licensee may claim against the performance bond.

#### **ARTICLE 39 PERSONNEL ASSIGNMENT GUARANTEE**

Licensor guarantees that the personnel assigned to this project will remain a part of the project throughout the duration of the Agreement, as long as the personnel are employed by the Licensor and are not replaced by Licensor pursuant to this Article. Licensor further agrees that the assigned personnel will function in the capacity for which their services were acquired throughout the life of the Agreement, and any failure by Licensor to so provide these persons shall entitle the State to terminate this Agreement for cause. Licensor agrees to pay the Licensee fifty percent (50%) of the total contract amount if any of the assigned personnel is removed from the project prior to the ending date of the contract for reasons other than departure from Licensor's employment. Subject to the State's written approval, the Licensor may substitute qualified persons in the event of the separation of the incumbents therein from employment with Licensor or for other compelling reasons that are acceptable to the State and may assign additional staff to provide technical support to Licensee. The replacement personnel shall have equal or greater ability, experience, and qualifications than the departing personnel and shall be subject to the prior written approval of the Licensee. The Licensor shall not permanently divert any staff member from meeting work schedules developed and approved under this Agreement, unless approved in writing by the Licensee. In the event of Licensor personnel loss or redirection, the services performed by the Licensor shall be uninterrupted, and the Licensor shall report in required status reports its efforts and progress in finding replacements and the effect of the absence of those personnel.

#### **ARTICLE 40 RETAINAGE**

To secure the Licensor's performance under this Agreement, the Licensor agrees that the Licensee shall hold back as retainage ten percent (10%) of each amount payable, including amounts payable under Change Orders, under this Agreement. The retainage amount will continue to be held until final acceptance of all deliverables by the Licensee.

#### **ARTICLE 41 CHANGE ORDER RATE AND PROCEDURE**

**41.1** It is understood that the State may, at any time by a written order, make changes in the scope of the project. No changes in scope are to be conducted or performed by the Licensor except by the express written approval of the State. The Licensor shall be obligated to perform all changes requested by the Licensee, which have no price or schedule effect.

**41.2** The Licensor shall have no obligation to proceed with any change that has a price or schedule effect until the parties have mutually agreed in writing thereto. Neither the State nor the Licensor shall be obligated to execute such a change order; and if no such change order is executed, the Licensor shall not be obliged or authorized to perform services beyond the scope of this Agreement and the contract documents. All executed change orders shall be incorporated into previously defined deliverables.

**41.3** With respect to any change orders issued in accordance with this Article, the Licensor shall be compensated for work performed under a change order according to the hourly change



order rates specified in Exhibit A. If there is a service that is not defined in the change order rate, the Licensor and the State will negotiate the rate. The Licensor agrees that these change order rates are “fully loaded” rates, that is, they include the cost of all materials, travel expenses, per diem, and all other expenses and incidentals incurred by the Licensor in the performance of the change order. The Licensor shall invoice the Licensee upon acceptance by the Licensee of all work documented in the change order, and the Licensee shall pay invoice amounts on the terms set forth in this Agreement. The Licensor acknowledges and agrees that the fully-loaded change order hourly rates in Exhibit A must remain valid for the duration of the Agreement, with annual increases not to exceed the lesser of a five percent increase or an increase in the consumer price index, all Urban Consumer U.S. City Average (C.P.I.-U).

**41.4** Upon agreement of the parties to enter into a change order, the parties will execute such a change order setting forth in reasonable detail the work to be performed thereunder, the revisions necessary to the specifications or performance schedules of any affected project work plan, and the estimated number of professional services hours that will be necessary to implement the work contemplated therein. The price of the work to be performed under any change order will be determined based upon the change order rate; however, the change order will be issued for a total fixed dollar amount and may not be exceeded regardless of the number of hours actually expended by the Licensor to complete the work required by that change order. The project work plan will be revised as necessary.

**41.5** The Licensor will include in the progress reports delivered under this Agreement, the status of work performed under all then current change orders.

**41.6** In the event the Licensor and the State enter into a change order which increases or decreases the time required for the performance of any part of the work under this Agreement, the Licensor shall submit to the Licensee a revised version of the project work plan, clearly indicating all changes, at least five (5) working days prior to implementing any such changes.

**41.7** The Licensee shall promptly review all revised project work plans submitted under this Agreement, and shall notify the Licensor of its approval or disapproval, in whole or in part, of the proposed revisions, stating with particularity all grounds for any disapproval, within ten (10) working days of receiving the revisions from the Licensor. If the Licensee fails to respond in such time period or any extension thereof, the Licensee shall be deemed to have approved the revised project work plan.

For the faithful performance of the terms of this Agreement, the parties have caused this Agreement to be executed by their undersigned representatives.

State of Mississippi, Department of  
Information Technology Services, on  
behalf of Mississippi Secretary of State's  
Office

**INSERT VENDOR NAME**

By: \_\_\_\_\_  
Authorized Signature

Printed Name: David L. Litchliter

Title: Executive Director

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Authorized Signature

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Mississippi Secretary of State's Office

By: \_\_\_\_\_  
Authorized Signature

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT A**

## **EXHIBIT B REQUIREMENTS MATRIX**

Vendor Instructions for completing the Requirements Matrix.

1. Vendor must indicate how their proposed solution meets each specification by filling in an X in one and ONLY one of the following columns in each row as described below:
  - 1.1 Yes - Base Functionality - The specification is met by the out of the box COTS solution without system configuration, modification, or customization.
  - 1.2 Yes - via Configuration - The specification is met by the out of the box COTS solution with system configuration (parameters, attributes, workflows, etc.).
  - 1.3 If No, estimated # hours for development. Vendor must have answered "N" to Column 1 "Yes - Base Functionality". Vendor must list the # of man hours required for development, enhancement, configuration, modification, or customization to satisfy this requirement/specification.
  - 1.4 Yes - System Modification - The specification is met by customization (programming, database modifications, etc.) that must be performed by the Vendor.
  - 1.5 Alternate Solution - The specification is met by a third party product or an approach that differs from the specification.
2. An X is NOT required for any row that is shaded in gray.
3. In addition to placing an X in the appropriate column, the Vendor must respond to each specification with "Acknowledge", "Will Comply", "Agreed", or "Exception" in the Vendor Response column.
4. In addition to the responses required in Section VII items 2-10, Vendor must provide details explaining how their proposed solution meets each specification. These details must be provided in the Vendor Response column. The Vendor MUST provide a response to each row as described above.